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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

NO. 224

J. P. STEVENS & CO., INC.,

Petitioner

vs.

NATIONAL LABOR RELATIONS BOARD

and

TEXTILE WORKERS UNION OF AMERICA, AFL-CIO

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petitioner prays the Court for a Writ of Certiorari directed to the United States Court of Appeals for the Second Circuit, to the end that this Court may review a Decision which that Court has rendered in a case involving the parties above-named. And the Petitioner respectfully shows to this Court:

THE OPINION OF THE COURT BELOW AND THE DECISION AND ORDER OF THE ADMINISTRATIVE AGENCY

The Opinion of the United States Court of Appeals for the Second Circuit is reported at 388 F. 2d 896 (2nd Cir., 1967). The Opinion is also printed, along with the Decree of the Court, in the Appendix to this Petition.

The case came to the Court of Appeals for the Second Circuit upon Petitions for Review of a Decision and Order of the National Labor Relations Board. The Decision and Order of the Board, 163 NLRB No. 24 (1967), is likewise printed in the Appendix to this Petition.

JURISDICTION OF THIS COURT

The judgment or decree of the Court below is dated March 26, 1968, and was entered on that date.

A Petition for Rehearing, which prayed, in the alternative, for modification of the terms of a decree proposed by the National Labor Relations Board, was denied by the Court below on January 5, 1968.

Jurisdiction to review, by Writ of Certiorari, the decree of the lower Court is conferred on this Court by the provisions of 28 U. S. C. §1254.

QUESTIONS PRESENTED FOR REVIEW

This case embodies a number of rulings and directives by the National Labor Relations Board, which are unusual and extreme in nature. The principal questions raised by these rulings and directives may be stated as follows:

(1) Is the Labor Board to be sustained in requiring an employer to turn over to a labor Union the bulletin boards inside the employer's plants, so that the Union may there post whatever it "reasonably" wishes to post, for a period of one year?

(2) Is the Board to be sustained in compelling the employer to assemble his employees and read to them a public confession of guilt in words and terms dictated by the Labor Board?

(3) In lieu thereof, may the Board send an emissary into the employer's plants to read such declaration to the assembled employees in the employer's stead?

(4) Is the Board to be sustained in ordering a three-fold communication of such declaration by the employer to the employees, that is, by reading it to them, by posting it in front of them, and also by mailing it into their homes?

(5) Is the Board to be sustained in ordering the employer to turn over plant bulletin boards to the Union, and to post and mail the prescribed notice to employees, not only in the plants where unfair labor practices are found to have occurred, but in a far larger number of plants throughout the States of North Carolina and South Carolina, most of which have never been in any way involved, or even mentioned, in this case or in any other Labor Board case?

(6) In proceedings before the Board, relative to the discharge of employees, when there is no evidence that the employees would not have been discharged had they been unconnected with any Union—and when the employer affirmatively shows reasonable, and often undisputed, cause

for their discharge, and asserts that under the circumstances the employees would have been discharged for just cause whether connected with any Union or not—is the Board to be sustained in ruling that nevertheless the discharges were unlawful?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Portions of the Constitution of the United States and of the National Labor Relations Act pertinent to this case are as follows:

"Congress shall make no law . . . abridging the freedom of speech . . ."

First Amendment to the Constitution of the United States

"No person shall be . . . deprived of life, liberty, or property, without due process of law . . ."

Fifth Amendment to the Constitution of the United States

"The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this subchapter, if such expression contains no threat of reprisal or force or promise of benefit."

29 U. S. C. §158(c)

"No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause."

29 U. S. C. §160 (c)

STATEMENT OF THE CASE

This case arises out of proceedings brought by the National Labor Relations Board against J. P. Stevens & Co., Inc., now Petitioner before this Court. This Company owns and operates textile plants in a number of States from New England Southward, principally, however, in the States of North Carolina and South Carolina, where 43 of the plants are located. The Company has approximately 45,000 employees.

In a prior case, involving the same parties[1], the Labor Board ruled that unfair labor practices had occurred in 19 of the Company's plants in North Carolina and South Carolina, during the approximate period mid-1963 to mid-1964. The ruling of the Board in the present case is that, during the approximate period mid-1964 to mid-1965, additional unfair labor practices have occurred in 8 of the 19 plants which were involved in the previous case.

These additional unfair labor practices are claimed to be the discharge of 18 employees in alleged violation of the National Labor Relations Act, and the alleged wrongful denial of overtime work to another employee, and alleged interrogations, promises and threats in violation of the Act.

In rendering its decision, the Labor Board imposed upon the Company a number of "remedy" directives, which it characterized as beyond the "conventional". (Appendix, p. 69a).

Upon the issuance of the Board's Decision and Order, the Company, as authorized by 29 U.S.C. §160(f), promptly

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[1] *J. P. Stevens & Co., Inc., vs. National Labor Relations Board,* 380 F. 2d 292 (2nd Cir., 1967).

filed a Petition for Review in the United States Court of Appeals for the Fourth Circuit—the plants involved being located within that Circuit, and the unfair labor practices having been alleged to have occurred there, and all the Labor Board hearings and proceedings having been conducted there.

Thereafter, the Textile Workers Union of America, AFL-CIO, which had initiated the charges against the Company before the Labor Board, filed a Petition for Review in the United States Court of Appeals fo the Second Circuit, upon a claim of aggrievement that the Board had failed to find the Company guilty of each and every wrong alleged in the Complaints.

Although the Company's Petition for Review in the Fourth Circuit antedated that of the Union in the Second Circuit, the Union was successful, over the Company's protest, in having the case transferred to, and heard and decided in, the United States Court of Appeals for the Second Circuit.

In the Court of Appeals for the Second Circuit, the Board's rulings and directives were sustained—with two modifications, one of which the Board assented to.[1]

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[1]*Textile Workers Union of America, AFL-CIO vs. National Labor Relations Board,* 388 F. 2d 896, 904, 906 (2nd Cir., 1967) (Appendix, p. 1a, 17a, 23a).

ARGUMENT AMPLIFYING REASONS WHY A WRIT OF CERTIORARI SHOULD BE GRANTED

I.

The Extraordinary Directives Of The Labor Board In This Case

Before reviewing for this Court the substantive rulings of the Labor Board and of the Court below, the Petitioner would respectfully bring to the Court's attention some considerations bearing upon the novel "remedies" which have been decreed in this case.

As to all of these it is first to be observed that no hearing has ever been held, and no discussion or argument has ever been heard or invited by the Board, on any question as to whether these remedies, or any of them, or any like them, would be appropriate or should be considered in this case, or in any case involving this Petitioner.

What reasoning or justification does the Board bring forward in support of the unusual directives here imposed? Essentially, the Board simply declares that the Company's unfair labor practices are "massive," and that therefore it should be subjected to these extraordinary orders.

Preliminarily, however, it might be noted that an allegation that 18, out of 45,000 employees, were wrongfully terminated, over a period of approximately a year's time, hardly seems to assert, upon the face of it, a case of "massiveness."

The view of the Board seems to be that its novel orders automatically follow from the momentum generated by the Board in the prior Stevens case—a case in which the

Board, over a period of months, heard 443 witnesses[1] testifying on a multitude of disputed and material factual issues, and upon such conflict never once found any witness for the Company to be telling the truth or any witness for the Union or the Board to be telling anything but the truth!

The Board says that it feels "the necessity of being imaginative" in its decrees (Appendix, p. 70a). Surely, however, this Court will recognize that a trend toward "imaginative" orders and edicts is the road away from government by law and toward government completely at the will and discretion of men.

A. The Directive That The Company Shall Turn Over Its Plant Bulletin Boards To The Union

One of the Board's decrees against the Company is that the Union shall be permitted to post on the bulletin boards, inside all the Company's plants throughout the States of North Carolina and South Carolina, whatever the Union "reasonably" wishes to post there for a period of one year.

In this the Board completely takes leave of any concept of requiring the Company to disavow and correct unfair labor practices. Obviously and undeniably the nature and purpose of this directive is simply to aid the Union in its organizing efforts among the Company's employees—and to require the Company to furnish such aid to the Union by turning over property and facilities within the Com-

[1] A majority of whom testified for the Company. They included not only supervisors and representatives of management, but rank and file employees and persons unconnected with the Company as well.

pany's plants, and in the midst of its employees while they are at work, on a continuing basis for a period of a year.

In the prior Stevens case, the Second Circuit Court of Appeals held that the Board had showed nothing justifying such an order. *J. P. Stevens & Co., Inc. vs. National Labor Relations Board,* 380 F. 2d 292, 305 (2nd Cir., 1967). In the present case, the record has nothing in it whatever on this subject. Yet the same Court now upholds this directive, after having expressly disapproving it in the earlier case.

The Court says:

> "In the case before us, the Board contends that Union access to the bulletin boards is necessary in order to offset the Company's use of the boards in its campaign of coercion and in the posting of lists of employees who had joined the Union, the names of those employees who withdrew being 'scratched' from the lists. We think that in view of the Company's use of the boards in combatting the Union, giving the Union reasonable access to them will effectuate the purposes of the Act, in that it will help to restore to the employees the opportunity to hear all viewpoints."
>
> *Textile Workers Union of America, AFL-CIO vs. National Labor Relations Board,* 388 F. 2d 896, 905 (2nd Cir., 1967)
> (Appendix, p. 1a, 20a)

As has been emphasized, however, there is nothing at all in the record, of the present case, showing any use of the plant bulletin boards "in combatting the Union" in any manner whatever.

In the prior case, there was evidence that on the bulletin boards in some of the plants a statement of the Company's position regarding the Union had been posted, and further evidence that in certain of these plants there had been posted copies of Company's letters in reply to employees, who had written to the Company notifying the Company of their Union affiliation. There has otherwise never been any evidence at any time of any "posting of lists of employees who had joined the Union," nor any evidence that the Company ever had any connection with any "scratching," at any location, of the names of any employees "who withdrew" from the Union.

As to "restoring to the employees the opportunity to hear all viewpoints," there has never been any evidence of any lack of any such opportunity. On the contrary, the record in both cases is replete with references to repeated and continuous contacts by Union representatives with the Company's employees—around the plant premises, at the employees' homes, at Union meeting halls, and through leaflets, letters, telephone calls, visits and assemblages.

Such being the evidence, and the only evidence, on this matter in the previous case, the Court below rejected the directive in question. Yet now the Court, with nothing in the present record on the subject at all, approves what it previously disapproved.

Moreover, this directive is made to apply to all of the Company's plants in the States of North Carolina and South Carolina, most of which have never been touched by a single word of evidence in either of these cases. As to them the records in both cases are completely blank.

Nothing shows even the names or locations of such plants. Nothing shows that there has ever been any intimation of any Union organizing efforts at those plants. Nothing shows or indicates that the Company, or any representative of the Company, has ever said anything about the Union to any employee in any of those plants at any time.

Yet they, as truly as the plants in which unfair labor practices are alleged to have occurred, are ordered to turn over to the Union all their bulletin boards for a period of one year.

It is startling to contemplate what actions and consequences may be encompassed within this edict. It is, in the first place, thoroughly nebulous. The Board makes not even a casual effort to define or limit the nature of the material which the Union may place on the Company's bulletin boards, nor the quantity thereof—nor the frequency of the Union "representative's" access to the bulletin boards.

What would be "reasonable" Union uses of these bulletin boards under all the varying circumstances of plant operations are indeed matters on which "reasonable," yet genuine, disagreements would almost inevitably occur. Controversy over such questions, could produce a veritable tangle of litigation—unless the Board could persuade the Courts, as indeed it seeks, to leave all such matters to the Board's discretion, unfettered and unbridled.

Nor is it a realistic assessment of the situation to consider that the question is merely one of allowing the Union to have space on the Company's bulletin boards. Actually, it is a matter of placing in the Union's hands a very large

measure of control over operations in the Company's plants —and over the success or failure of such operations. For by means of what it might place in front of employees while at their work, the Union could excite them, arouse them, or distract them, and create widespread deterioration of morale and performance in the Company's plants.

It might or might not have been in vain for the Company to have argued property rights to the Board[1]—pointing out to the Board that the "right of property" is a cornerstone of any free society, and that the Constitution of the United States fundamentally provides that neither Federal or State Government and therefore no arm or agency of either, may invade or take any man's property without due process of law.

But whatever reception such considerations and arguments might have had at the hands of the Labor Board, surely they are not unavailing here, and the Petitioner earnestly presses them upon the attention of this Court.

> "Whatever else may be uncertain about the definition of the term 'due process of law,' all authorities agree that it inhibits the taking of one man's property and giving it to another, contrary to settled usages and modes of procedure, and without notice or an opportunity for a hearing."
>
> *Ochoa vs. Hernandez Y. Morales,*
> 230 U. S. 138, 161, 139 S. Ct.
> 165, 57 L. Ed. 1427, 1437

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[1]But, as hereinabove pointed out, the Company never had any opportunity to do so.

"It [the Act] does not require that the employer permit the use of its facilities for organization when other means are readily available."

National Labor Relations Board vs. Babcock & Wilcox Co., 351 U. S. 105, 114, 76 S. Ct. 679, 100 L. Ed. 975, 983

B. The Directive With Respect To The Reading Of A Company Declaration And Confession To Employees

By further exercise of the "imaginative" the Board has decreed that in the plants as to which unfair labor practice rulings have been made, the Company shall "convene during working time, by departments and by shifts, all its employees" and "shall read" to them a declaration as prescribed and worded by the Board (Appendix, p. 80a).

This declaration is essentially a confession of guilt. There is no doubt but that the impression of any audience would be that the employer is being forced to confess that he has broken the law and is being required to declare that he will not do so again. And that, indeed, is the true nature of the situation. For the statement prescribed in this case speaks repeatedly of this Company's "discrimination" against employees in terminating them, and of its "discriminatorily" withholding work from them (Appendix, p. 78a, 83a).

Let us picture a situation in which an official of the Company is standing in front of assembled employees, reading the required statement to them. There is no evading or

avoiding the fact that as the Company's official reads the Company's signed statement, referring to the Company's discriminations, *declaration and confession is being made that the Company has discriminated—and that the Company has thereby violated the law—and is guilty.*

It is submitted that this is an amazing edict for an agency of our Government to hand down. In this land *no* citizen may be compelled to confess guilt or declare himself a violator of the law—or so it has been until now.

This Court has been at great pains to see to it that no one is unduly influenced to confess guilt. *Miranda vs. Arizona,* 384 U. S. 436; *Escobedo vs. Illinois,* 378 U. S. 478. Yet here an arm of the Federal Government orders it, and directs that it be done before assemblages of fellow citizens.

Even the convicted felon can never be compelled to confess that he has violated the law, and he can always and forever deny guilt and, indeed, at every opportunity proclaim that he has been unjustly convicted. Are the rights of employers in labor matters less?

As Judge Learned Hand, speaking exactly to this subject, said so clearly:

> "Forcibly to compel anyone to declare that the utterances of any official, whoever he may be, are true, when he protests that he does not believe them, has implications which we should hesitate to believe Congress could ever have intended . . . [T]oo long a history, and too dearly bought privileges, are behind such refusals . . . [W]e can very well understand the sense of outrage which anyone may feel at being forced publicly to declare that he has

committed even a minor dereliction of which in his heart he does not believe himself guilty."

Art Metals Construction Co. vs. National Labor Relations Board, 110 F. 2d 148, 151 (2nd Cir., 1940)

It might be noted that the declaration required of the employer in the instant case does not contain language, such as was present in the case last above quoted, by which the employer would proclaim that it will "cease and desist" from unlawful actions[1]. The principle is nevertheless the same, for the declaration here prescribed, as pointed out above, does refer repeatedly to "discrimination"—violative of the law—on the part of the Company, and to actions, "discriminatorily," and therefore wrongfully and unlawfully, engaged in by the Company.

". . . [W]e cannot believe that it was the intention of Congress to countenance an administrative order the effect of which is to require from one who denies that he has violated the law a confession that he has violated it. Such a notice as has been approved by this Court accomplishes the same result as the one ordered by the Board and avoids the unnecessary humiliation involved in an order which in effect requires the employer to confess

[1]cf. *J. P. Stevens & Co., Inc. vs. National Labor Relations Board,* 380 F. 2d 292, 304 (2nd Cir., 1967).

publicly a violation of the law which he denies, and has the right to deny, even though he may have been found guilty of the violation."

Hartsell Mills Co. vs. National Labor Relation Board, 111 F. 2d 291, 293 (4th Cir., 1940)

The Court below says that it regards the requirement in question "somewhat less emotionally"[1]. It is respectfully submitted that such view does not sufficiently take into account the deep and historic issue which is brought to the surface.

The forcing of public declarations, in the nature of confessions or recantations, is not a matter to be lightly entered upon. The annals of human struggles should make this abundantly clear.

The feeling and the resolution of free men against forced utterances can become extremely intense. Over many centuries, they have suffered oppressions and even death rather than disavow wrongs which they deeply and devoutly believed they had not committed.

It is tragic that we should now have in our Government even the slightest veering in such a direction. He who cannot see in these newly devised directives of the Labor Board an ominous trend—whether so intended or not—backwards toward old oppressions, is one who does not learn from the lessons of history and of human experience. In

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[1]*Textile Workers Union of America, AFL-CIO vs. National Labor Relations Board,* 388 F. 2d 896, 904 (2nd Cir., 1967) (Appendix, p. 17a).

such manner are fundamental rights eroded—and freedom gradually, yet wholly, lost.

> "... [I]llegitimate and unconstitutional practices get their first footing in that way, namely: by silent approaches and slight deviations from legal modes of procedure ... It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon."
>
> *Boyd vs. United States,* 116 U. S. 616, 635, 6 S. Ct. 524, 29 L. Ed. 746, 752

Justice Brandeis, dissenting in *Olmstead vs. United States,* refers to *Boyd vs. United States,* from which the foregoing language is quoted, as "a case that will be remembered as long as civil liberty lives in the United States," and goes on himself to observe that:

> "Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning, but without understanding."
>
> *Olmstead vs. United States,* 277 U. S. 438, 479, 48 S. Ct. 564, 72 L. Ed. 944, 957 (Dissent by Justice Brandeis)

And the eloquent admonition of Justice Sutherland, dissenting in *Associated Press vs. National Labor Relations*

Board, has true application indeed to the situation now before this Court:—"Do the people of this land—in the providence of God, favored, as they sometimes boast, above all others in the plenitude of their liberties" desire to preserve them, he asked.

> "If so, let them withstand all *beginnings* of encroachment. For the saddest epitaph which can be carved in memory of a vanished liberty is that it was lost because its possessors failed to stretch forth a saving hand while yet there was time."
>
> *Associated Press vs. National Labor Relations Board,* 301 U. S. 103, 141, 57 S. Ct. 650, 81 L. Ed. 953, 965

Already, the only two Courts, other than the Court below, which have considered this reading-of-notice directive have strongly disapproved it. The United States Courts of Appeals for both the Fifth Circuit and the District of Columbia Circuit are in direct disagreement with the Second Circuit on this subject.

> "The requirement of the Recommended Order that the Notice be read by management to any employee who requests it, as amended by the Board to require it be read to each employee, singly or collecetively, is unnecessarily embarrassing and humiliating to management rather than effectuating the policies of the Act."
>
> *National Labor Relations Board vs. Laney & Duke Storage Warehouse Co.,* 369 F. 2d 859, 869 (5th Cir., 1966)

The Court of Appeals for the District of Columbia, specifically noting the decision of the Second Circuit Court on this matter in the prior Stevens case, nevertheless declared:

> "The ignominy of a forced public reading and a 'confession of sins' by any employer, any employee, or any Union representative, make such a remedy incompatible with the democratic principles of the dignity of man."
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> *International Union of Electrical, Radio and Machine Workers, AFL-CIO vs. National Labor Relations Board and Scott's, Inc.*, 383 F. 2d 230, 234 (D. C. Cir., 1967).

It is submitted, however, that beyond "democratic principles," there is here involved the ultimate principle of individual liberty and freedom—"the cherished rights of mind and spirit"[1]—guaranteed to every citizen by our written Constitution—against the encroachment of any and all power, including that of Government itself.

It is to be observed that, by way of palliative, the Court below offered an "option" to the effect that the reading of the declaration might be done "by representatives of the Board rather than by the Company's officials."[2]

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[1] *Malloy vs. Hogan*, 378 U. S. 1, 5, 84 S. Ct. 1489, 12 L. Ed. 2d 653, 657.

[2] *Textile Workers Union of America, AFL-CIO vs. National Labor Relations Board*, 388 F. 2d 896, 904 (2nd Cir., 1967) (Appendix, p. 17a).

If, however, the employer must assemble his employees and open his premises to an agent of the Labor Board, who stands and reads the employer's declaration for him, the true nature of the situation is not altered or disguised. The forced statement of the employer is simply being spoken for him by a forced agent.

Certainly, also, on such a stage, the Government is being cast in an entirely new and most unflattering role—as its delegate solemnly declaims in public view a statement as coming from the employer, which is in truth no voluntary statement of the employer at all but a compelled and forced declaration. It may safely be said that such a scene has not been enacted in this land since the founding of our Republic.

The Court of Appeals for the District of Columbia specifically considered this "option" as put forward by the Court below, and unhesitatingly rejected it.

> "This procedure, however, creates a problem more severe than the one it supposedly solves.
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> . . .
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> "Board involvement in a reading of the order would inescapably draw the Board into the very conflict areas it should remain aloof from, except for the need to judge."
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> *International Union of Electrical, Radio and Machine Workers, AFL-CIO vs. National Labor Relations Board and Scott's, Inc.*, 383 F. 2d 230, 233 (D. C. Cir., 1967)

C. The Directives That The Prescribed Declaration Shall Be Thrice Communicated To Employees And That Posting And Mailing Of The Declaration And Union Access To Bulletin Boards Shall Be Required At Plants Not In Any Way Involved In Any Claim Of Unfair Labor Practice

The Board, with the endorsement of the Court below, orders not only the reading of the Company's statement of confession to the employees, but also orders that the Company shall post signed copies of it on plant bulletin boards and likewise mail signed copies into the homes of employees (Appendix, p. 79a).

Apart from the other considerations herein discussed, the question naturally arises:—Why such triplicate "notification"? Once the notice has been placed on the bulletin boards, where the employee regularly reads notices, does he need—and does he desire—receiving exactly the same notice in the mail at his home? And is he not surfeited indeed with this "notification" when he returns to the plant and is taken off his job and read the same notice again? It would seem that he is being somewhat over-notified.

It is clear that after a proper and systematic posting of the notice has been accomplished, the Board's true purpose beyond that is not notification at all, but is simply the placing of the Company in as many postures of obeisance as the Board can devise.

Still further, the Board decrees, and the Court below sustains its decree, that the ordered declaration must be

posted on bulletin boards and mailed to the homes of employees—and that likewise the Union must be allowed to post on the bulletin boards whatever it may "reasonably" desire to post—at all of the Company's plants in North Carolina and South Carolina, though at most of them there has never been any claim of any wrongdoing of any nature (Appendix, p. 79a).

The Board says:—"we believe it necessary" to make these directives "applicable to all" the Company's plants in North Carolina and South Carolina in order that the employees in all of them may "be informed" of the Company's "intention to refrain from coercing them"[1]. (Appendix, p. 74(a).

In the previous case, the Board added to this bare statement the further assertion that the Company's unfair labor practices "were so well publicized" that they must surely have had "a coercive impact" on all the Company's other employees "in the area."

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[1]If the Board were interested in determining whether the employees of this Company really were under "coercion" from the Company, it would seem that it should pay some heed to the unquestionable fact that during the course of the Union's organizing efforts among the Company's employees—at the specific requests of the Union and *at times and places chosen by the Union*—the Board has conducted elections in 10 of the Company's plants and in every instance the employees have voted, by *secret ballot*, decisively against the Union—and that in one plant, the Company's largest, the Board conducted a re-run election, holding it at the Union's insistence away from the plant, and yet the employees went to the polling place and voted the Union down by a majority more than twice as large as before.

Yet it is an undeniable fact that there was not in the record of the prior case—and there is not in the record of the present case—a single shred of evidence supporting that pronouncement on the part of the Board. There is no evidence, and there has not at any time been any evidence, that any actions of the Company were "well publicized," nor indeed publicized at all. There is no evidence, and there has been no evidence, that there has ever been at any time, or in any way, any "coercive" effect or influence whatever upon any employees in the Company's other plants.

The fact that there is not a scintilla of evidence that employees in other plants have ever been in any way coerced —or that they are aware of anything even tending to coerce them—does not deter the Board from applying its novel "remedies" to them.

> "Notwithstanding that there was no charge of unfair labor practices as to three of the plants, and that the charge was dismissed as to one, this order requires that notices be posted in all of them. In support of this provision, the Board argues that the unfair labor practices were system-wide, centrally directed and coordinated and, therefore, the order should apply to all plants. It cites in support of its position *N. L. R. B. vs. Express Publishing Co.*, 312 U. S. 426, 438, 61 S. Ct. 693, 85 L. Ed. 930. In our judgment, there is nothing in this case which supports the Board's position. On the other hand, in *N. L. R. B. vs. Ford Motor Co.*, 5 Cir., 119 F. 2d 326, the court expressly held against the Board's contention in a similar situation. The court found the Board was with-

out jurisdiction to make an order broader than the subject matter of the complaint. We agree with this conclusion. Furthermore, we think that petitioner, if it, at some future time, should be charged with an unfair labor practice at a plant or plants not included in the instant proceeding, would be entitled to a hearing before the Board, rather than this court in a contempt proceeding."

Reliance Manufacturing Co. vs. National Labor Relations Board, 125 F. 2d 311, 321-322 (7th Cir., 1941).

"Respondent company contends that there was no substantial evidence that it had followed any unlawful hiring practices at any projects other than Paducah; and with this contention, we agree.

. . .

"In accordance with the foregoing, the order of the Board is modified by deleting the requirement that respondent company post the copies of the notice required by the Board, at places or projects other than the project at Paducah, Kentucky."

National Labor Relations Board vs. F. H. McGraw & Co., 206 F. 2d 635, 641 (6th Cir., 1953)

To the same effect are the decisions in:

Shell Oil Co. vs. National Labor Relations Board, 196 F. 2d 637 (5th Cir., 1952).

National Labor Relations Board vs. Thompson Ramo Wooldridge, Inc., 305 F. 2d 807, 811 (7th Cir., 1962).

On the whole subject of remedy directives, the Labor Board deems that it has a wide latitude, "to tailor"[1] and devise orders which will "effectuate the policies of the Act," and that in this it has developed a superior talent and discernment, which has generally come to be referred to as administrative "expertise."

The first and basic caveat with respect to this proposition is that if accepted at face value, it would mean that the power of the Board is virtually limitless. For, as becomes apparent in the present case, there is practically nothing that the Board might not require of an employer in the guise of "tailoring a remedy."

It is vital to note that the National Labor Relations Act does not itself give any presumptive validity whatever to "remedy" devising by the Board. Such presumption of validity, accorded by the Act to the "findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole" is not provided with respect to the Board's decreeing of remedies. 29 U. S. C. 160(e).

"Remedy" directives are left unqualifiedly within the judgment and discretion of the Court—the Court weighing and appraising them for itself and "enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the board" entirely as the Court may see fit. 29 U. S. C. 160(e). This consideration is of particular force where, as here, the remedy directives are innovations

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[1] *H. W. Elson Bottling Co.*, 155 NLRB 714, 60 LRRM 1381 (1965).

and, as the Board itself recognizes, beyond "the conventional."

Moreover, the real truth is that the Labor Board has no more "expertise" for appraising these remedies, against the background of the law and the rights and interests of all the parties, than do Courts of law and equity—nor as much—sophisticated phraseology, in behalf of the Board, to the contrary notwithstanding.

It is respectively submitted that reviewing Courts should not be too ready to relax their scrutiny, and too willing to agree that the judicial function is largely preempted, when the Board raises the magic talisman of "expertise" or intones a solemn incantation about "tailoring a remedy."

> "Reviewing Courts must be influenced by a feeling that they are not to abdicate the conventional judicial function. Congress has imposed on them responsibility for assuring that the Board keeps within reasonable grounds."
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> *Universal Camera Corporation vs. National Labor Relations Board,* 340 U. S. 474, 490, 95 L. Ed. 456, 468

> "The deference owed to an expert tribunal cannot be allowed to slip into a judicial inertia which results in the unauthorized assumption by an agency of major policy decisions properly made by Congress."
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> *American Ship Building Co. vs. National Labor Relations Board,* 380 U. S. 300, 318, 85 S. Ct. 955, 13 L. Ed. 2d 855, 867

"... '[U]nless we make the requirements for administrative action strict and demanding, *expertise* . . . can become a monster which rules with no practical limits on its discretion' . . . 'Congress did not purport to transfer its legislative power to the unbounded discretion of the regulatory body'."

Burlington Truck Lines, Inc. vs. United States, 371 U. S. 156, 167, 83 S. Ct. 239, 9 L. Ed. 2d 207, 215

"Nothing in the statute, nothing in any of the decisions lends countenance to the view that Congress intended to make of the Circuit Courts of Appeals mere rubber stamps, mere perfunctory executors of the Board's unrestrained will. They make the contrary quite clear. It is, therefore, for this court, in the performance of its function under the statute, to say not blindly but in the exercise of an informed discretion, first, whether the findings are supported by the evidence, and, second, whether the Board's orders are *appropriate* under the statute."

National Labor Relations Board vs. Ford Motor Co., 119 F. 2d 326, 330 (5th Cir., 1941)

"Furthermore, we are convinced that this is not a case in which administrative expertise is of compelling weight. It is not a problem of such great technicality that only experts can untangle it . . . [H]e is no friend of administrative law who thinks that the Commission should be left at large."

National Labor Relations Board vs. Kingston Cake Co., 206 F. 2d 604, 611 (3rd Cir., 1953)

"The Supreme Court has made it clear that national labor policy is for the Congress and not the Board to determine."

Armco Steel Corporation vs. National Labor Relations Board, 344 F. 2d 621, 625 (6th Cir., 1965)

". . . [S]everal recent decisions emphasize the necessity that a statutory basis, either expressed or reasonably implied, be found when the Board undertakes to fashion policies which, in its judgment, are desirable in balancing the conflicting interests between management and labor."

National Labor Relations Board vs. Dalton Brick & Tile Corporation, 301 F. 2d 886, 894 (5th Cir., 1962)

"We have said that 'this authority to order affirmative action does not go so far as to confer a punitive jurisdiction enabling the Board to inflict upon the employer any penalty it may choose because he is engaged in unfair labor practices even though the Board be of the opinion that the policies of the Act might be effectuated by such an order.' We have said that the power to command affirmative action is remedial, not punitive.

. . .

"In that view, it is not enough to justify the Board's requirements to say that they would have the effect of deterring persons from violating the Act. That argument proves too much, for if such a deterrent effect is sufficient

to sustain an order of the Board, it would be free to set up any system of penalties which it would deem adequate to that end."

Republic Steel Corp. vs. National Labor Relations Board, 311 U. S. 1, 7, 11-12, 85 L. Ed. 6, 10, quoting *Consolidated Edison Co. vs. National Labor Relations Board,* 305 U. S. 197, 235-236, 59 S. Ct. 206, 83 L. Ed. 126, 143

"The powers conferred upon this court by the National Labor Relations Act to enforce the orders of the Board are equitable in nature and may be invoked only if the relief sought is consistent with the principles of equity."

National Labor Relations Board vs. National Biscuit Co., 185 F. 2d 123, 124 (3rd Cir., 1950)

The following are further examples of cases in which "remedies" devised by the Board have been held by the Courts to be beyond the proper exercise of the Board's authority:

Local 60, United Brotherhood of Carpenters and Joiners vs. National Labor Relations Board, 365 U. S. 651, 81 S. Ct. 875, 6 L. Ed. 2d 1.

Consolidated Edison Co. vs. National Labor Relations Board, 305 U. S. 197, 83 L. Ed. 126.

Western Union Telegraph Co. vs. National Labor Relations Board, 113 F. 2d 992 (2nd Cir., 1940).

Local 357, International Brotherhood of Teamsters vs. National Labor Relations Board, 275 F. 2d 646 (D. C. Cir., 1960).

Morrison-Knudsen Company vs. National Labor Relations Board, 276 F. 2d 63 (9th Cir., 1960).

National Labor Relations Board vs. American Dredging Company, 276 F. 2d 286 (3rd Cir., 1960).

National Labor Relations Board vs. United States Steel Corporation, 278 F. 2d 896 (3rd Cir., 1960).

National Labor Relations Board vs. Kiekhaefer Corporation, 292 F. 2d 130 (7th Cir., 1961).

National Labor Relations Board vs. Miscellaneous Drivers and Helpers Local 610, 293 F. 2d 437 (8th Cir., 1961).

Local 1351, Steamship Clerks and Checkers vs. National Labor Relations Board, 329 F. 2d 259 (D. C. Cir., 1964).

National Labor Relations Board vs. Prince Macaroni Manufacturing Co., 329 F. 2d 803 (1st Cir., 1964).

Communications Workers of America vs. National Labor Relations Board, 362 U. S. 479, 80 S. Ct. 838, 4 L. Ed. 2d 896.

The Petitioner respectfully urges that this is a case which justifies the attention of this Court. The "remedy" decrees which have been issued in this case by the Labor

Board, and upheld by the Court below, definitely have in them the seeds—if not yet the full flower—of government controlled more and more by the will of men rather than by the rule of law.

II.

The Labor Board's Unusual Treatment Of The Evidence In This Case

The substantive controversy of this case centers around the employee discharges which are involved. It is submitted that in reaching its conclusions against the Petitioner, the Labor Board has not followed the normal principles of logic, of law, and of reasonableness which are rightly applicable to any process of fact determination.

For example, the Board's Trial Examiner began his Decision with a ruling, subsequently endorsed by the Board, that one, Ben Surratt, who never appeared at the hearing at all, should be reinstated with back pay. When counsel for the Board at the hearing, expressed perplexity as to Surratt's whereabouts and as to why he had failed to appear for testifying in his own behalf, the Examiner observed that "Surratt obviously would have to be here for him to have a case" (409-410[1]). Yet in ruling, this was entirely disregarded by both the Examiner and the Board, and the decision was awarded to Surratt without his ever having been seen or heard.

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[1]All references having no other designation than page numbers are references to the transcript of the record made at the hearings before the National Labor Relations Board Trial Examiner, a copy of which is now on file with this Court.

Again, for example, the Board ordered the Petitioner to reinstate with back pay one, Willard Page, who admitted on the witness stand that prior to his discharge, and in the presence of other employees, supervisory and non-supervisory, he called his supervisor "a liar" (1001, 1007). Page further testified that upon being informed that he was discharged, he called the supervisor "a son of a bitch and a bastard and everything else" that he "could think of" (1002-1003). The supervisor testified, without contradiction, that Page supplemented all this with a threat "to smash" the supervisor's "head in" and "break [his] legs," and that "he'd get" the supervisor if it took "twenty years" (1583, 1584). This in no way, however, deterred the Board from ordering that Page be reinstated with back pay.

The Board reaches many drastic conclusions against the Company upon inferences which are nothing other than suppositions and suspicion. It assumes that an employee's Union affiliation is the reason for his discharge, no matter that the Company shows other sensible, reasonable, and often undisputed, cause for his discharge.

The Board repeatedly declares that an employee was discharged because of his being a Union member, when there is no evidence whatever that he would not just as truly have been discharged, had he been unconnected with the Union—and when the Company plausibly asserts that, under the demonstrated circumstances, he definitely would have been discharged whether affiliated or unaffiliated with the Union. In short, the rulings of the Board place this Company in the position of being unable to discharge or disci-

pline an employee, no matter what his failures may be—if only he shows to the Board that he is connected with the Union.

If knowledge of the employee's Union connection is established or conceded, as was the case in most, but not all, instances here—and it being clear, as here, that the employer is opposed to the Union—and the employee being thereafter discharged—is it reasonable and permissible to infer, upon these elements, that the employee was unlawfully discharged? It would seem not. For the deductive process in such situation is a matter of very dubious logic, and the conclusion is still in large measure a matter of surmise and conjecture.

But, in any event, the Company does not rely merely upon that failure of proof on the part of the Board, with respect to any of the terminations here at issue. For here, in every instance, there is affirmatively presented a contrary explanation in favor of the employer—sufficiently clear, substantial and plausible, that it offsets and rebuts and renders logically and legally impermissible any conclusion of guilt which might otherwise have been made.

Yet in the present case—and here is the crucial injustice which they do this Company—the Examiner and the Board move on by main strength to the "inference" of unlawfulness and guilt—turning indifferently away from the explanation favorable to the Company, systematically rejecting or ignoring it, as if it had never been brought forward at all!

Thus ground for discharge being present and witnesses for the Company asserting that the employee was dis-

charged on that account, and that he would have been so discharged whether connected with the Union or not—and there being no proof that were he non-Union he would not have been discharged for the cause shown—the Board nevertheless chooses to infer, that is "finds," that the employee was discharged because of his being connected with the Union.

Yet the Statute affirmatively provides that if an employee is "discharged for cause," there shall be no order in his behalf. 29 U.S.C. §160(c). And the law is clear that the burden is, and remains throughout, upon the Board to prove that the employee was discharged because of Union affiliation on his part.

An employer, who desires and prefers to operate his plant on a non-Union basis might welcome the fact that a Union activist has done, or failed to do, something constituting clear ground for discharge. Still if a non-Union employee would equally have been discharged for doing, or failing to do, the same thing, then the true rule is that the employer is not to be convicted of violating the law upon discharging the Union employee. And further, as has been emphasized, the true rule is that the burden is on the Board to prove that such is not the case.

The Court is, of course, familiar with the relevant legal principles, but it would seem not amiss to summarize those which are particularly applicable to the present case.

" '. . . [I]t is specifically provided that no order of the Board shall require the reinstatement of any individual

or the payment to him of any back pay if such individual was suspended or discharged for cause, and this, of course, applies with equal force whether or not the acts constituting the cause for discharge were committed in connection with a concerted activity'."

• • •

"Many cases reaching their final disposition in the Courts of Appeals furnish examples emphasizing the importance of enforcing industrial plant discipline and of maintaining loyalty as well as the rights of concerted activities."

National Labor Relations Board vs. Local Union No. 1229, 346 U. S. 464, 473, 474, 74 S. Ct. 172, 98 L. Ed. 195 (1953)

"If discrimination may be inferred from mere participation in union organization and activity followed by a discharge, that inference disappears when a reasonable explanation is presented to show that it was not a discharge for union membership."

National Labor Relations Board vs. United Brass Works, Inc., 287 F. 2d 689, 693 (4th Cir., 1961)

"The Board may not 'substitute its judgment for that of the employer as to what is sufficient cause for discharge' (citation omitted). And discrimination may not be inferred from an employee's mere membership in a union (citations omitted). In every case the burden is on

the Board to prove that an employee's discharge resulted from his union activities."

National Labor Relations Board vs. Wagner Iron Works, 220 F. 2d 126, 133 (7th Cir., 1955)

"The mere fact that Medlin was active in the union can not alone support a finding of discriminatory discharge because there is here substantial evidence that the employer discharged him for cause."

National Labor Relations Board vs. Montgomery Ward & Co., 157 F. 2d 486, 492-493 (8th Cir., 1946)

"The Board is not permitted to substitute its guess, unsupported by evidence, for the declared purpose, intention or reason of the employer, and to thus convict the employer of an unfair labor practice."

National Labor Relations Board vs. Arthur Winer, Inc., 194 F. 2d 370, 374 (7th Cir., 1952)

"To conclude from such evidence that respondent discharged Wingate because of her union activities requires the pyramiding of inferences which has been so often rejected by the Courts.

. . .

"It must always be remembered that the burden of proving discriminatory acts by the employer is and remains upon the General Counsel . . ."

National Labor Relations Board vs. Miami Coca-Cola Bottling Co., 222 F. 2d 341, 344, 345 (5th Cir., 1955)

"If his [the employer's] explanation is a reasonable one, the onus is upon the Board to establish the falsity of this explanation and the truth of its own interpretation."

Martel Mills Corp. vs. National Labor Relations Board, 114 F. 2d 624, 631 (4th Cir., 1940)

"True it is that the Company discharged three employees who had been engaged in the strike. But discharge after participating in a strike without more is not conclusive proof that they were discharged *because* they had so participated. Granting that an inference may be drawn from the mere fact of participation followed by discharge that such participation was its cause, the inference disappears when a reasonable explanation is presented that participation in the strike was not the cause of their discharge."

Ohio Associated Telephone Co. vs. National Labor Relations Board, 192 F. 2d 664, 666 (6th Cir., 1951).

"In each case such membership may have been the cause, for the Union was not welcomed by the persons having authority to discharge and employ. If no other reason is apparent, union membership may logically be inferred. Even though the discharger disavows it under oath, if he can assign no other credible motive or cause, he need not be believed. But it remains true that the discharger knows the real cause of discharge, it is a fact to which he may swear. If he says it was not union membership or activity, but something else which in fact existed as a ground, his oath cannot be disregarded because of suspicion that he may be lying. There must be impeachment of him, or substantial contradiction, or if circumstances raise doubts, they must be inconsistent with the positive sworn evidence on the exact point."

National Labor Relations Board vs. Stafford, 206 F. 2d 19, 23 (8th Cir., 1953)

"Specifically we are in no doubt that the evidence completely fails to support the finding that William Robinson was discharged because of his membership in, and activity on behalf of, the union. On the contrary, it shows without contradiction or dispute that he was discharged for open and continuous insubordination and disobedience of orders, and the order requiring his reinstatement with back pay is itself an unfair labor practice and as such is prohibited by Section 10(c) of the act which provides, 'No order of the Board shall require the reinstatement of any individual as an employee who has

been suspended or discharged . . . for cause . . .' 29 U.S.C.A. §160(c)."

National Labor Relations Board vs. American Thread Co., 210 F. 2d 381, 383 (5th Cir., 1954)

It is respectfully submitted that if the Court will examine the evidence in the cases of the employee discharges here at issue, it will find that the Labor Board has drastically departed from these principles which should control and govern its findings of fact.

The Petitioner realizes that an examination of the facts relating to these discharges is a burden upon the Court. But the patience of the Court in such task is prayed. For there is otherwise no refuge and no protection against the errors and the injustices which are here revealed.

A. Analysis Of The Evidence Relating To The Discharge Of Employees

There follows now a brief summary and analysis of the evidence bearing upon each of the employee discharges at issue in this case. These will be discussed in the same sequence in which they appear in the decision of the Board's Trial Examiner (J. A. 66-149)[1].

Ben Surratt

Ben Surratt worked as a "service" man in the Company's Republic Plant No. 3, at Great Falls, South Carolina. He

[1] "J.A." refers to the printed Joint Appendix filed by all parties with the United States Court of Appeals for the Second Circuit, a copy of which is now on file with this Court.

bears, as noted above, the rather unusual distinction of having found favor in the eyes of the Examiner and the Board without being either seen or heard. For Surratt did not testify or appear at the hearing of his case, although Counsel for the General Counsel stated at various points during the hearing that he was expecting Surratt at any time (408-410, 418).

Surratt's principal tasks were to attend to warp changing and yarn "break-outs" on the looms in the Weave Room where he worked (144). He was discharged for failure to correct break-outs with reasonable efficiency and promptness (145). Supervisors Burt Dixon and Clifford Brannan testified specifically and in detail as to Surratt's continuing failures of performance in these respects (147, 149, 153, 155, 345, 346, 376, 378, 393-396).

The Trial Examiner does not point out or rely upon any evidence tending to refute the evidence that Surratt was guilty of such failures repeatedly and in excessive degree. Instead, the Trial Examiner opines that these grounds for discharge were "pretext only" and that "the real reason" for Surratt's discharge was his connection with the Union (J. A. 70).

The Trial Examiner says that "Surratt had not been issued a personnel action report prior to his name being posted as a Union member," and that "on July 22, immediately after . . . wearing his Union button to work, he was given a write-up" (J. A. 69). The most charitable thing that can be said of these comments by the Trial Examiner is that they constitute a highly inadequate narra-

tion of the evidence to which they relate. Surratt's name was "posted as a Union member" shortly after August 18, 1963 (J. A. 66). The uncontradicted evidence is that, thereafter, he received a written reprimand or Personnel Action Report, on February 3, 1964, another on June 25, 1964, and still another on July 22, 1964 (385).

At another point, the Trial Examiner says that Surratt and two other employees, shortly before Surratt's discharge, began wearing "T-shirts," with Union insignia on them, "at work," and that supervisor Carter "sent them home to take the insignia off." This is not a correct statement. There is no evidence that any supervisor ever sent Surratt home on account of his wearing any Union insignia or with any direction to remove any Union insignia. All the evidence on the point, even from witnesses for the Board's General Counsel, was to the contrary (85, 302-304).

In its Decision and Order, the Board admits the inaccuracies in the Trial Examiner's handling of the evidence referred to in the two preceding paragraphs, but the Board says that these are immaterial. If, however, these matters were immaterial, it seems reasonable to ask why the Examiner was discussing them.

In Surratt's case, the Trial Examiner devotes very considerable attention to reviewing various of the "findings" which he arrived at upon a hearing, in 1964, of a separate group of cases involving this Petitioner (Board Cases Nos. 11-CA-2180, et seq.). He says that at the earlier hearing there was testimony as to conversations between

Superintendent Melvin Smith and Assistant Manager Leland Burns and several employees, one of whom was Surratt. He declares that the employees' versions of such conversations "were not denied by either Smith or Burns" at the earlier hearing (J. A. 67). In this, the Trial Examiner completely ignores the testimony of both Burns and Smith (Transcript of prior hearing 965-967, 1933-1937. Respondent's Statement of Exceptions to Trial Examiner's prior Decision, pp. 12-13).

The Examiner invokes a finding from the earlier cases that Assistant Manager Burns had "characterized Walden" in these same conversations as a "damned ring-leader" in the Union (J. A. 67). However, Walden—and testimony in the earlier cases relating to him—has no perceptible bearing upon the present Surratt case. This account of an alleged statement by Burns with respect to Walden, the Examiner had enthusiastically accepted from a witness at the former hearing, one Hyatt, and now with equal enthusiasm stresses it in the present case—although this witness, in the prior hearing, admitted on cross-examination that in giving a complete account and written statement of his conversation with Burns, he never once mentioned in such statement that Burns had so "characterized Walden" (Transcript of prior hearing 350). And this same witness, in trying to explain why he never included in his written statement such alleged characterization by Burns, first said that he "was scared" of the Board investigator, and then later said that he hadn't put it in his statement because he supposed that he hadn't "remembered it" (Tran-

script of prior hearing 351, 352. Respondent's Statement of Exceptions to Trial Examiner's prior Decision, p. 12).

Yet the Examiner now harks back to such discredited testimony in the prior hearing, drags it into the present case, and upon it, piles remote and uoconnected inferences —to reach a "finding" that the Petitioner wrongfully discharged the employee now under consideration, namely, Ben Surratt.

Near the conclusion of the evidence relating to Surratt's case, and as Counsel for the Board recounted his perplexities as to Surratt's whereabouts, the Trial Examiner declared that "Surratt obviously would have to be here for him to have a case" (409-410). Yet the Examiner now forgets what he then saw "obviously," and awards the palm to Surratt in absentia.

Hubert Varnadore

Hubert Varnadore was a weaver at the Republic No. 3 Plant. He worked on the third shift. He was discharged because of the poor quality of his work, particularly in his failing to observe when his looms were weaving "seconds" or defective cloth (306, 347-348). His immediate supervisor, Clifford Brannan, testified that Varnadore's performance in this respect kept getting "worse"; that he didn't take any "interest in it," and that "it didn't look like he cared" (348).

On August 29, 1963, Varnadore received a written reprimand or "P. A. Report" on account of the deficient quality of his work. On March 30, 1964, he received another such written reprimand, on April 16, 1964, another, and on

November 11, 1964, still another (331-334, 348-350). Varnadore admitted not long before his discharge he was told by his General Overseer, W. M. Carter, that he would "be fired" the "next time" he "had a write-up" (107).

On the last night Varnadore worked, he allowed one of his looms to run for four to five hours weaving a "warp-wide" defect in the cloth, without noticing it or doing anything about it (307, 350-354). Brannan testified that Varnadore wouldn't have allowed this to happen if he had "cared anything about his job" (354). As of the time that Varnadore's shift ended, he had still not ovserved this running defect, but the weaver who operated the same looms on the succeeding shift, detected it promptly after the beginning of her shift and brought it to the attention of her supervisor (307, 316-317). The defective roll of cloth was removed from the loom, and when Varnadore came back to work on his next shift, it was shown to him "all the way back to where it started" (353). Varnadore admitted that this was done (119). Brannan then recommended to Carter that Varnadore be discharged (354). Carter had Varnadore come to his office. The "roll of cloth" was "sitting there in the office," and Carter asked Varnadore "if he wanted to see it again," and Varnadore replied that "he didn't" (309). At this time Varnadore was discharged (309).

Faced with this evidence, the Trial Examiner simply declares that he is "not persuaded" that "the cloth" which was showed to Varnadore "in fact came from one of Varnadore's looms" (J. A. 75). The Examiner observes that "Varnadore was not shown" this cloth "before it was

removed from the loom, nor was Brannan" (J. A. 75). As to this, however, the Examiner fails to note the simple fact that the running defect was caught by the weaver on the shift following Varnadore's, and that at this time both Varnadore and his supervisor, Brannan, had already left. The natural procedure at that point was to remove the defective cloth from the loom, put the loom back into production, and set aside the defective roll until Varnadore and his supervisor, Brannan, could see it upon returning to the Plant on their next shift (317).

It is further to be noted that although the Examiner declares himself "not persuaded" that the defective cloth was in fact Varnadore's, Varnadore himself seems not to have, nor to have had, any such question about the matter. He testified that he wasn't "saying" that "it wasn't" his cloth (128). He admitted that he had not "ever made any claim to anybody, anywhere, either at that time or since then, that this was not [his] cloth" (130, 309). But the Examiner does not hesitate to make the claim for him, though there is no evidence to support such a position.

Next, the Examiner raises question as to why the Petitioner discharged Varnadore, the weaver, on this occasion, but did not discipline the loom fixer, one Preston Greene (J. A. 75). As to this, it was explained that although it is likewise a duty of loom fixers to inspect cloth for running defects, it is not their task constantly to inspect the cloth, as is the case with respect to weavers themselves (320). Brannan pointed out that the time for such inspection by loom fixers was as promptly after shift change as possible, and that when loom fixer Greene made such in-

spection of the loom in question, it was soon after the beginning of the third shift—at which time the defects here involved had not begun to run (355-356). Brannan further called attention to the fact that on the occasion of Varnadore's last written reprimand, that is, November 11, 1964, Greene, the loom fixer, had received a written reprimand along with Varnadore—because, on that occasion, the defect was running at a time and under such circumstances that both Varnadore and Greene should have observed it (355).

The Examiner makes much of the fact that Carter referred to this occasion of Greene's being reprimanded as the same occasion on which Varnadore was discharged—whereas Brannan correctly pointed out, as the date on Greene's written reprimand confirmed, that the occasion on which Varnadore and Greene were both reprimanded was that of November 11, 1964, instead of March 16, 1965, when Varnadore was terminated (351, 358).

The Examiner incorrectly quotes Carter as "testifying that he could not recall any weaver whom he had ever previously discharged" (J. A. 77). What Carter actually testified, on this point, was that he could not "name the last" weaver who had been discharged "before" Varnadore (323).

Finally, the Examiner once more acclaims the testimony about Walden having been "characterized" as a "damned ring-leader" in the Union (J. A. 76). And not only was that testimony, as hereinabove pointed out, thoroughly discredited (Respondent's Statement of Exceptions to Trial

Examiner's prior Decision, pp. 10-12). In the present case, moreover, it has the character of very obvious and transparent coloring matter, for it is certainly without relevance to the discharge of Hubert Varnadore.

Juanita Faulkenberry

Juanita Faulkenberry was a weaver at the Company's Republic Plant No. 1. It is uncontradicted, and indeed the Trial Examiner found as a fact, that "Faulkenberry was not associated with the Union" (J. A. 78). And the Examiner recommended "that the complaint be dismissed as to Faulkenberry" (J. A. 78).

The Board, however, rules that the Petitioner must reinstate Faulkenberry, with back pay, because it believes that she was not discharged for cause, but on account of her having "given testimony" in an earlier hearing "unfavorable to the Petitioner" (J. A. 27).

Faulkenberry's foreman, Arthur Lee Justus, and her immediate supervisor, Simean A. Dawkins, testified that during the latter part of October, 1964, it became necessary to reduce, by three, the number of weavers in the Weave Room. They both stated that Mrs. Faulkenberry was one of the three weavers who were terminated at this time, because the quantity of her production was very "low" (46, 48, 297). Mrs. Faulkenberry, in testifying, admitted that her production had "got down very low"—"real low"—and indeed was "terribly bad" (70, 71, 72).

The evidence was undisputed that, on the occasion of Mrs. Faulkenberry's termination, the number of weavers

in the room was reduced from 63 to 60, and was never expanded above 60 after that (230).

The only significant controversy of fact in Mrs. Faulkenberry's case centered around the question as to whether her low production, in comparison to other weavers, was due to her having difficult styles of fabric and inefficient loom fixers assigned to her (J. A. 23, 24). As to this, both Justus and Dawkins testified that other weavers who had the same styles and fixers had higher production (234, 282). Justus stated that he had "tried Mrs. Faulkenberry on several sets of looms" (252). Dawkins testified that she had "been a low production weaver" all along and "ever since" she first came under his observation as a supervisor (285). As Dawkins put it:—Mrs. Faulkenberry "had just gotten so slow that she just couldn't keep up a set of looms. It didn't matter where, or what set of looms she was on, or what—in most cases—what fixer she was working with, her production remained low" (297).

The Board "finds," however, that since Mrs. Faulkenberry gave testimony in an earlier hearing, in the case of one Ralph Harrison, the Petitioner discharged her on that account.

As the Trial Examiner points out, however, Mrs. Faulkenberry's "testimony at the first hearing was relatively innocuous" (J. A. 78). In his earlier ruling in the Harrison case, the Examiner had barely mentioned the testimony of Mrs. Faulkenberry. Indeed, the Petitioner, in the Ralph Harrison case, had relied upon Mrs. Faulkenberry's testimony as being favorable to it (Board's brief in the earlier case, p. 54).

Still further, it is to be noted that Mrs. Faulkenberry's testifying in the Harrison case had occurred many months prior to her termination. And finally, it should be remembered that at the time Mrs. Faulkenberry was terminated, there had been no ruling against the Petitioner in the Ralph Harrison case—to say nothing of the fact, as pointed out above, that the Petitioner considered Mrs. Faulkenberry's testimony in that case to have been favorable to the Petitioner.

But in the face of all this, the Board chooses to "believe" and therefore "finds" that the Petitioner's explanation of Mrs. Faulkenberry's termination is false and that, in truth, she was discharged because she testified in the Harrison case.

John Fulbright

John Fulbright was a loom fixer in the Company's Dunean Plant, at Greenville, South Carolina. On June 11, 1964, a leaflet or pamphlet became very widely distributed in the Weave Room, where Fulbright worked, and during his shift.

Allan Scruggs, Fulbright's immediate supervisor, testified that he found copies of this leaflet "on the bulletin board, stuck on posts, on the shuttle boards, on the looms, on loom handles, lying on work benches, and in general just all over the entire job" (1108). The result was that a great deal of discussion about the leaflet occurred, and there was a general disruption of work throughout the shift (1108). Scruggs described the situation as "a state of general confusion" (1115). He testified that he saw "between

75 and 100" of these leaflets over the Weave Room during the shift in question (1108, 1126).

Scruggs further testified that the situation was entirely different from the ordinary occasions on which Union leaflets were distributed to the employees at the Plant entrances (1172). Usually, on such occasions, individual employees would put such leaflets in their pockets (1205). One or more of such leaflets would thereafter occasionally be seen in the Plant. But in this instance, "the Weave Room was just flooded with them" (1172). "They were on posts, on the bulletin board, on the looms, people were gathered up looking at them and talking and laughing and snickering about them" (1172).

C. J. Pride, General Superintendent of the Plant, testified that "it was a rather disruptive thing" and "did attract a lot of attention from the people" (1176). He stated that "he had never known" before "of an occasion" of anyone "bringing leaflets into the Plant and distributing them like that before" and that this was "the first time" that "anything" of this sort had been done "on such a scale as that" (1181, 1205).

This difference between the situation, and other instances of occasional leaflets being seen in the Plant, seems to be one which the Examiner and the Board are unable, or unwilling, to comprehend (J. A. 33).

Supervisors and management investigated the matter and arrived at the conclusion that "Fulbright was the one that had brought them to the Plant and had caused or gotten other people to distribute them on the job" (1147).

Pride testified that "everything that was learned pointed up that it was Fulbright who had instigated and brought the leaflets in the Plant, and was mainly responsible for the distribution of them in the Plant" (1178-1179).

Fulbright himself admitted that "the Union organizer at Dunean Plant" gave him "about 160 or 170" of these leaflets, and that he, Fulbright "took approximately 60 or 70" of them "into the Plant at work time" (722, 751). This leaflet was not distributed to the employees at the Plant entrances, as was normal and usual (1159).

Billy Ray Hiott, a reed cleaner, in the Weave Room, testified that Fulbright asked him if he "could put a stack of" the leaflets in Hiott's locker, and that this was done, but that he, Hiott, later told Fulbright that he would like for Fulbright to "get them out of there" (1237-1238). Hiott further testified that Fulbright talked to him about "scattering them out over the job," but that he, Hiott declined to do so (1239). Hiott stated that he later saw Fulbright "put one up" in "the water house on the bulletin board"; that Fulbright "had some more in his locker; and he took them and he put some on our job down there on a loom handle" (1239-1240). Hiott's testimony was that among the "248 looms" where he worked, there were "pretty close to 100 leaflets" scattered around, "on the looms and on the posts and on the wall back there; there was some hanging on the wall," and on "the work benches" (1240-1241).

Hiott further testified that "there was a lot of difference" with respect to "the quantity or amount of leaflets" scattered over the Weave Room on this occasion as compared

to the usual situation after leaflets had been distributed to the employees at the Plant entrances (1262). He stated that "very seldom did you see any of them" in the Plant on other occasions, but that in this instance, "everywhere you walked you'd see one" (1262).

Willie O'Bryant, a weaver, testified that he saw Fulbright "in the water house" with "some" of the leaflets "in his pocket, some in both pockets, giving them out to certain people around in the water house"; that he later saw the leaflets "scattered all over the Weave Room, on shuttle boards, on the wall, on posts" (1268). O'Bryant said that Fulbright had the leaflets "all night"; that "he was putting them in rolls of cloth, sticking them down and letting them go down in a roll of cloth, or sticking them on the shuttle board, and at twelve o'clock," which was the end of Fulbright's shift, "he got rid of what he had by putting them on the work benches of the third shift loom fixers" (1268).

Supervisor Scruggs testified that another employee, Ronald Boling, told him "that Fulbright had given him a bunch of" the leaflets, and that upon his, Scruggs, asking Boling "what he had done with them," Boling "said he had hid them downstairs, and he went and got them, and they were carried to Mr. Pride's office" (1109-1110). Scruggs recounted that Boling stated that "at the time" Mr. Fulbright "told him not to be caught with those leaflets, not to let anybody see him give them out, and put them on the looms and on the bulletin boards" (696, 1110, 1150, 1151).

Scruggs likewise testified about Billy Ray Hiott's coming to him and stating "that there was a stack" of the leaflets put in his, Hiott's locker, and that he, Hiott, "went to Mr. Fulbright and told him that he didn't want any part of them, and asked him to take them out," and that Fulbright "told him" that he, Fulbright, "would take them out of" Hiott's locker (697, 1111). Scruggs testified with respect to Boling's telling him that "Fulbright had called him," Boling, "a dirty son-of-a-bitch," and that he, Fulbright, "would get even with him," Boling, for "telling where" the leaflets "came from" (1110, 1134).

After spending some days in gathering what evidence they could on the whole matter, Fulbright's supervisors, together with Superintendent Pride, decided that Fulbright should be discharged, and Fulbright thereupon was terminated.

The Trial Examiner declares that "there is no evidence" that Fulbright did anything toward getting the leaflets spread around over the Weave Room, except that he "had a leaflet in the washroom which was passed from employee to employee, and that he helped post one on a bulletin board where employees posted various announcements of interest" and except that "he gave" some to Boling, at Boling's request, "cautioning" Boling "not to pass them out during working hours" (J. A. 80). This is not a correct statement. There was ample evidence of Fulbright's doing a great deal more than this, as is outlined above.

Another amazing pronouncement by the Trial Examiner is his statement that "it should have been obvious that it

was the individual employees who had accepted" the leaflets in question "at the gate and carried them inside" (J. A. 81). On the contrary, upon all the evidence delineated above, it was obvious to supervision and management that this is not what had happened.

Still further, with respect to Boling's report to Scruggs as to Fulbright's cursing and threatening him, the Examiner delivers himself of the ukase that the "Petitioner is not the censor of the language employed by one employee in addressing another, or the custodian of their ethics" (J. A. 82). The Examiner thus decrees that the employer must permit the employees in the Plant to curse and threaten each other without limit, let or hindrance.

The Trial Examiner says that "according to Scruggs, the only difference between the distribution on June 11, 1964, for which Petitioner discharged Fulbright, and previous distributions, was that the employees carried more into the Plant on June 11" (J. A. 83). This is indeed a striking misstatement of Scruggs' testimony and of the Respondent's position. Fulbright was not discharged because "the employees carried more" leaflets "into the Plant on June 11," but because the Petitioner investigation indicated that he, Fulbright, had carried a very large quantity of leaflets into the Plant and had been the source and cause of their being spread all over the Weave Room, to the distraction and confusion of the employees in the Weave Room throughout an entire shift.

Still further, the Examiner repeats that "certainly there is no evidence" that Fulbright "distributed the leaflets in-

side the Plant" (J. A. 83). This is a plain misstatement of fact. There was a plenitude of such evidence, as hereinabove outlined.

Oliver Durham

Oliver Durham worked as a cloth doffer in the Weave Room. At the time of his discharge, according to his own testimony, he had been in the employment of the Petitioner for approximately two years—not "several years," as the Trial Examiner states (936, J. A. 84).

John Gero, Assistant Overseer, D. D. Cheek, Assistant Overseer, and Claude Long, Overseer, all testified that Durham had been criticized many times about his failure to cut the cloth rolls off the looms at the proper point and also his failure to cut off sample swatches of the cloth (1496, 1502, 1514-1517, 1533). On August 20, 1964, Durham was given a written reprimand on account of his repeated deficiency in these respects (1498).

Durham had a further failing of staying away from his job too often and too long (1502, 1533, 1537). The incident which precipitated Durham's discharge was an occasion on which he had been missing from his job "about 25 minutes," and his immediate supervisor went looking for him and found him in the water house (1538). On this occasion "his job was behind," and Cheek stated that that was why he "was looking for him" (1542). Cheek's testimony was that Durham "had cloth that had gone over a good bit, and was supposed to have done been doffed" (1542). Cheek's testimony was that Durham "was the worst" employee he had "by far" with regard to "staying off his job and being away too long" (1566).

Durham admitted that during the Summer of 1964, he "was working at another job" with another Company, in addition to his job with the Petitioner (951). He also admitted that on the occasion immediately preceding his discharge, his supervisor, Cheek, told him that he, Cheek, had "heard" that he was leaving his job and going "and sleeping" (951).

The Trial Examiner says that "it is nowhere asserted that Durham's work was not caught up" on this occasion immediately preceding his discharge (J. A. 90). On the contrary, it was definitely so asserted by Cheek, as set forth above.

The Examiner undertakes to make a great point of the fact that, according to Cheek's testimony, when he found Durham in the water house on the final occasion, he also found another cloth doffer, John Cobb, there, and that, according to the uncontradicted testimony of both Cobb and Durham, Cobb had been in the water house longer than Durham (J. A. 87). But this does not refute Cheek's testimony that Durham had been away from his job for 25 minutes (1538). It was of no moment whether he had spent this 25 minutes in the water house or in loafing elsewhere.

The Examiner points out that "Durham and Cobb are Negroes," and he becomes considerably exercised about their using a different water house from the white male employees (J. A. 86, 92). The Examiner seems uncertain as to whether he is trying the Petitioner for "civil rights" discrimination or for violation of the National Labor Rela-

tions Act. This dilemma he resolves by enthusiastically concluding that "both" Durham and Cobb "were discriminated against in the use of segregated washroom facilities," and that Durham was discriminated against "doubly" (J. A. 92).

Willard Page and Junior Hulsey

Willard Page and Junior Hulsey worked at "picker" machines in the Carding Department. Page's job was feed the pickers, and Hulsey was the "change" man, who cleaned the pickers (974). They were discharged because of the following circumstances. On the night of September 29, 1964, they walked off the job and left the Plant "ten or fifteen minutes before" quitting time (976, 978, 1575). Upon returning to work the next night, September 30, 1964, they were warned by their immediate supervisor, Dwight Hawkins, not to do this again (977, 1576). But on the same night, that is, September 30, 1964, they both quit work and left the Plant again "about fifteen minutes" before their shift ended (974, 1577, 1578).

Upon returning to work on the next day, October 1, Page and Hulsey were each asked to come into the office. Hawkins testified that he told Page that he tried to locate him before quitting time "last night" and "couldn't find" him, and that thereupon Page called him, Hawkins, "a damned liar" (1578, 1607). Page admitted that on this occasion, and "before he was fired," he said to Hawkins "you're a liar" (1001, 1007).

Page admitted that shortly thereafter, while supervisors Claude Vaughn and Jack Tatham and Junior Hulsey and

another employee, Hall, were in the office, he, Page, called Hawkins "a son-of-a-bitch and a bastard and everything else" and "everything" he "could think of" (989, 1002-1003). Hawkins testified that Page also told him that he, Page, "was going to smash [his] head in" and "break [his] legs" (1582-1583). Hawkins testified that Hulsey also, on this occasion called him, Hawkins, a "son-of-a-bitch" (1580, 1608). The Trial Examiner takes no note, and makes no mention, of any of this.

Page and Hulsey denied leaving the Plant early on September 29, denied being reprimanded about this, and denied leaving the Plant early on September 30 (J. A. 95)—although other employees, two of whom were non-supervisory, testified as follows.

Joe Cothran, a machine fixer, stated that, on the last night Page and Hulsey worked, he saw them both leave "at least ten minutes" before "quitting time," and that upon Hawkins' "checking the job" and asking him, Cothran, if he had "seen them," Cothran told Hawkins that he had "seen them leave" (1624-1625). The Examiner says that Cothran "did not know where they went" (J. A. 96). This may be true, but Cothran did know that they departed from their work station and failed to return, and that this left "the job in a mess" and caused additional work for him (1625).

Luther Mitchell, Assistant Overseer, testified that on the last night Page and Hulsey worked, he helped Hawkins in trying to find Page and Hulsey prior to quitting time, but that they were not able to locate them (1641-1642).

And Bobby Pressley testified that he worked on the third shift, following Page and Hulsey, and that on the night of September 30, he came into the Plant "between five and ten minutes" before the end of the second shift, and that on the way into the Plant, he passed Page and Hulsey "sitting out on the bench," which is "between the Mill and the Mill gate down there" (1615-1616).

None of this daunts the Examiner and the Board, however, and they "find" without any difficulty that Page and Hulsey were discharged on "pretext" only (J. A. 97).

W. O. Epps

W. O. Epps was a "tie-in" helper. He was laid off because of reduction in "spun yarn" work and a consequent reduction in need for tie-in helpers (1381).

At the time of his lay-off, Epps' period of employment had been a little less than two years (839). The Examiner refers twice to "Epps' 42 years" of employment with the Petitioner (J. A. 97, 98). As Epps himself testified "a lot of times" he had "quit, more than anybody else," he thought (838).

Epps further testified that at the time he was laid off, Earl Lollis, Superintendent of Weaving, explained to him that the Company "didn't have as much spun rayon on at that time" as "when he put me on the job" (839). Epps further stated that insofar as he knew, the Company had not "put anybody else" on his job since he had "been laid off" (839).

Lollis testified that prior to the time of Epps' lay-off, there were three tie-in helpers on the first shift, three on

the second and two on the third (1381). At the time of Epps' lay-off, these were reduced to two tie-in helpers "on each" shift (1382). Lollis further stated, and it is undisputed, that this reduction in the "tie-in" personnel has since continued (1382, 1387).

The Examiner remarks that supervisor Wallace Grier "had no knowledge of any impending reduction in the number of looms or any need for it" (J. A. 100). The Examiner misunderstands the nature of the change in production which brought about the lay-off. There was not a reduction in the number of looms, but a reduction in the use of spun yarns on the looms, which in turn reduced the need for "tie-in" personnel. Grier did have "knowledge" that the Weave Room "was coming down on spun" yarns, and so testified (1405).

Lollis testified that at the time of Epps' lay-off, there were two tie-in helpers who had less seniority on the job than Epps (1382). These men were Johnson and Massingale. Lollis emphasized that both of these men were "superior" to Epps "in running the job" (1382-1383). At the time of the reduction in the "tie-in" help, Johnson was placed on a "lease out job" on the "third shift" (1384), that job having "come open" because the man who had held it had just gone into "military service" (1385). Lollis stated that he did not place Epps on this job because it required work on "fine yarns," and "Epps' vision" was "bad" (1383). Lollis further pointed out that Johnson "could operate a tie-in machine," whereas he never knew of Epps ever being able to do so (1385). Confirming, however, the necessity of these moves, Lollis pointed out

that Johnson's pay was cut as a result of his job change (1409).

The Examiner points out that Epps' "name appeared on the leaflets which the Union distributed at the Plant" (J. A. 97). It is to be noted, however, that exactly the same thing was true with respect to Massingale, the other tie-in helper who had less seniority than Epps and who was retained on the job of tie-in helper, when Epps was laid off (1409).

The Examiner says that he "has difficulty understanding" why, at the time of the reduction in the "tie-in" personnel, Epps was not put at other work instead of being laid off (J. A. 99). Epps testified that he had formerly run a "smash" hand job for a number of years and could have done that (839). Lollis pointed out, however, that he had taken Epps off the "smash hand" job, because "he just could not see well enough to draw those ends in, in the correct places" (1383). Epps admitted that the "smash hand" work gave him "the headache" (847). He further admitted that when he was laid off, he did not ask Lollis anything "about going on any other work" (856). Lollis, likewise, testified that at the time of the lay-off, he "didn't have anything else open, anything that [he] thought Mr. Epps could do" (1384). He further stated that Epps did not "in any way specify" to him "anything else" that he, Epps, "thought he could do" (1384).

Jake Owens

Jake Owens for about two and a half years prior to his discharge had been a "lead man in the Warehouse" (1081).

Although he had been a satisfactory employee in the Warehouse prior to his being promoted to the position of lead man, he did not prove to be satisfactory as a lead man and was discharged on that account (1778-1779).

Owens' supervisor, Clarence H. Thomas, who was Overseer of the Warehouse and Yard, testified that "around the first of the year," 1965, he began to discuss Owens' "job with him, and let him know that he wasn't doing the job" that he, Thomas, thought that Owens "was capable of doing" (1766). Thomas stated that he also "told him if he didn't run his job, that we would have to make some changes" (1766).

With respect to the circumstances immediately preceding Owens' discharge, Thomas testified that in April, 1965, he instructed Owens to move some "cans of sliver that had been received" into "the Warehouse, so they wouldn't be in the way of shipping" (1767). Thomas said that "the next day" he "went out to the Warehouse and the cans were still there," and again he instructed Owens to move them, Owens meanwhile admitting that the cans had been in the way "all during shipping yesterday" (1767). After this second instruction, Owens did move the cans (1767).

Thomas testified that shortly thereafter, he and his superior, James W. Corbett, decided that approximately 150 cans of sliver or yarn, which were scattered around in the Warehouse, would have to be moved and "topped" and stacked, so as to make room for yarns which were to be brought into the Warehouse (1768). On April 27, Thomas informed Owens of this decision and directed him to move

and top and stack these 150 cans of sliver (1768, 1744). The next day, Thomas "went out" to the Warehouse, and found that Owens "hadn't done a thing to the cans" (1768). Thereupon he repeated to Owens the instructions which he had given Owens on April 27 (1770, 1775, 1788). On May 3, Thomas and Corbett went out to the Warehouse and found that Owens still "hadn't moved the cans," and that "they were still just where they were on April 27" (1769). The cans were "scattered around" in the Warehouse "from the entrance all the way to the back of the Warehouse, and just about a third over in the middle of the floor" (1776). After this visit by Thomas and Corbett, on May 3, Owens did proceed to move and stack the cans (1776).

Thomas testified that on May 5, he told Owens that "we'd had an awful lot of complaints" about "the condition of the platform" at the "lowest section of the Warehouse" (1776). He instructed Owens that this platform must be "cleaned up," and that the "trash cans" on the platform must be "emptied and the tie bands put in the scrap bin" where tie bands were supposed to be kept (1776-1777). Owens, however, failed to "clean anything off the platform" (1777). Thomas stated that he thereupon decided to ask Corbett's permission to discharge Owens (1777-1778). Corbett gave his consent to this, and Thomas then went to the Warehouse and discharged him (1778). Thomas stated that, at the time of this final discussion with Owens, he reviewed Owens' deficiencies with him in some detail and pointed out the respects in which he, though a lead man, was failing "to get the work done" (1783).

Owens repeatedly denied all of this, claiming that he had never been criticized in any way about his work and had never failed to fulfill Thomas' instructions at any time or in any way (1089, 1092, 1096). In this, the Examiner does not seem to believe Owens, for he accepts Thomas' account of Owens' successive failures to follow instructions with respect to the 150 cans of sliver (J. A. 101). The Examiner points out, however, that Owens was discharged two days after he had finally "stacked the cans" as "Thomas wanted them" (J. A. 102). The Examiner overlooks the final incident, in which Owens, on the day he was discharged, failed to "clean anything off the platform" after he had been pointedly and specifically instructed to do so (1777).

The Examiner finds fault with the Petitioner for discharging Owens, instead of demoting him to one of the jobs he formerly held before he became a lead man (J. A. 102). In this, the Trial Examiner ignores the consideration that employers usually, and reasonably, deem that an employee having once been promoted, it is not ordinarily wise or advisable to move him back down the scale (1779).

The Examiner also stresses the fact that Owens was discharged, without ever having received a written Personnel Action Report (J. A. 102). As to this, Thomas pointed out that "over the years" that he had "been in a supervisory position," he had discharged more employees "without writings" of any sort than with "writings" (1814).

Jake Owens' case presents a striking example of the Examiner's and the Board's cavalier handling of evidence.

In order to sustain their finding that Owens was discharged for "Union activity," the Examiner and the Board rely entirely upon the following matter. Owens testified that on a Sunday afternoon, some days prior to his discharge, he attended a Union meeting in the nearby town of Piedmont. There was evidence that Ralph Compton, a foreman in the employment of the Petitioner, rode though the town of Piedmont, in an automobile, on the same afternoon.

It is undisputed that Compton was not, and had never been, a supervisor over Owens. Compton testified that he did not know Jake Owens; that he did not know of any Union meeting being held in the town of Piedmont on the afternoon in question; that he and his "wife and a neighbor and her husband" were "out on a Sunday afternoon ride"; that insofar as he was aware, he did not see Jake Owens on that afternoon and would not have known Owens if he had seen him; and that he never made "any report or statement to anybody connected with the Company" that he "had seen Jake Owens" or "anybody resembling Jake Owens" (1825-1827). There was no evidence contrary to this and no contradiction of this testimony on the part of Compton.

But the Examiner blithely "finds" that "Compton saw Owens" and that Compton "knew the occasion to be a meeting of the Union" and that there was some report by Compton to someone "at the Mill" that he, Compton, "had seen Owens at the meeting" (J. A. 101). The Examiner also says that Compton "did not deny" that "he knew" that there was a Union meeting being held in the

town of Piedmont on the afternoon in question (J. A. 101). This latter is, of course, a flat misstatement of Compton's testimony, for, as noted above, Compton testified exactly to the contrary. The Board refers casually to Owens being "seen at the Union meeting" (J. A. 37).

Here is a clear case of a crucial "finding," made without any affirmative evidence whatever to support it, and in the face of uncontradicted evidence to the contrary.

Still further, the Board says that, on the Monday following the Sunday afternoon in question, James Corbett, the Manager of the Warehouse, where Owens worked, "interrogated Owens about Owens' attendance" at the "Union meeting held the previous day" (J. A. 36[1]). This is a most egregious mishandling of the evidence—hardly worthy of a slight-of-hand artist. Nobody testified that Owens was interrogated "about" his "attendance" at the "Union meeting held the previous day." Owens' own testimony was that Corbett came by while he, Owens, "was sitting down," and that he told Corbett that his "knee was hurting," and that Corbett asked him if he hadn't "gone to the doctor yet" and if he didn't "stay home and lay down" the preceding day, Sunday, and that upon his, Owens, telling Corbett that he "went to Church"

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[1]The Examiner says that "this conversation took place about 7:30 A. M.," and the Examiner points out that "according to Owens," this was an unusually early time "for Corbett to be in the Warehouse" (J. A. 100). Again, the Examiner misstates the evidence. Owens himself testified that when he saw Corbett in the Warehouse at 7:30 in the morning, nothing was said to him "at that time," and that his conversation with Corbett was "later that day" (1084).

instead, Corbett asked him what Church he attended, and that Corbett then "walked off and didn't say no more" (1084-1085, 1090). The testimony of Corbett was to the same effect (1820-1821).

Yet upon this, and this only, the Board blandly "finds" that "Corbett interrogated Owens about Owens' attendance at a Union meeting held the previous day" (J. A. 36). What the Board means, of course, is that despite the state of the record outlined above, it thinks that it knows what Corbett had in his mind as he talked to Owens, and therefore the Board is willing to make the flat declaration that "Corbett interrogated Owens about Owens' attendance at a Union meeting held the previous day." Such is the accuracy of the Board's statements of the evidence and such is the character of the "findings" which the Board asks this Court to accept and endorse.

Arthur Dean

Arthur Dean worked as a trucker at the Company's Black Hawk Warehouse, in Greenville, South Carolina.

The Superintendent of the Warehouse, R. W. Griffin, testified that on July 15, 1964, approximately two weeks before Dean was discharged, it was reported to him, Griffin, by Ray Loftis, foreman, that Dean had walked off his job approximately an hour before quitting time (443, 528). Billy McKee, foreman, testified that he saw Dean leaving his work on this occasion (577, 579). Dean admitted that he was reprimanded by Griffin on account of this incident (486).

Griffin testified that two days later, that is, on July 17, Ray Hinton, foreman, reported to him that Dean had walked off the job again, this time also approximately an hour before quitting time (445, 528). Griffin stated that on this occasion Dean was reprimanded by Hinton (529). Hinton testified that he saw Dean leave the job on this second occasion and that he reprimanded Dean about it (594).

The testimony of Griffin, Hinton and McKee was to the effect that, on these occasions, Dean was working with a crew at a location, called the "Commerce Service Warehouse," some distance away from the Black Hawk Warehouse; that the regular quitting time was 5:00 P. M.; that the usual and proper procedure was for all of the crew to leave the Commerce Service Warehouse shortly before five o'clock and travel by truck back to their regular place of work, the Black Hawk Warehouse, and there check out; and that Dean's misconduct, on the two occasions in question, was that he left the Commerce Service Warehouse approximately an hour early, took a short cut "across a field" on foot to the Black Hawk Warehouse. Dean admitted that he did cross the field on one of these occasions and did not know of anybody else ever having done this (477).

Dean testified that there was no second occasion, as claimed by Griffin and Hinton, and that on the occasion when he did "cross the field," it was at approximately the regular quitting time and that he did not "go over" to the Black Hawk Warehouse at all (481, 485).

In this, however, Dean is completely refuted by his time clock cards, which were placed in evidence by the Respondent, and which showed that on July 15, he punched out at the Black Hawk Warehouse at 4:04 P. M., and that on July 17, he punched out at the Black Hawk Warehouse at 4:06 P. M. (535). These time clock cards not only contradicted Dean's testimony that he did not return to the Black Hawk Warehouse on July 15, but they also conclusively established that he left work approximately an hour before the regular quitting time on each of these days.

The Examiner, strangely, refers to the July 17 incident, but makes no mention whatever of the July 15 incident (J. A. 110). He says that "according to McKee" Dean left his work at the Commerce Service Warehouse at "about 4:45 P. M." (J. A. 110). In fact, McKee said no such thing. His testimony, on the contrary, was that he "saw Dean walking across the field" at "a little before four" (577). Moreover, McKee testified, and there was no evidence to the contrary, that he was not present on the occasion of the July 17 incident, which the Examiner refers to, but that he, McKee, was only present on the occasion of the prior incident, which, as has been noted, took place on July 15 (579).

Still further, the Examiner says that on the occasion of the July 17 incident, McKee "told Dean not to do this again" (J. A. 110). Not only is this incorrect, in that McKee, as pointed out above, was not present at the time of the July 17 incident, which the Examiner says he is referring to. The Examiner is also completely inaccurate

in saying that McKee reprimanded Dean. Griffin testified that he reprimanded Dean on the July 15 occasion, and Hinton testified that he reprimanded Dean on the July 17 occasion. Dean testified that Griffin reprimanded him on the first occasion. Nobody, on either side, ever testified to what the Examiner finds, namely, that McKee reprimanded Dean.

The Examiner goes on to say that "according to McKee" Dean did not commit the same offense again (J. A. 110). McKee said no such thing at all. He merely testified, as pointed out above, that the only occasion on which he saw Dean leaving work before quitting time and "crossing the field" was on the first occasion, July 15, (575). He certainly gave no testimony that Dean did not commit the offense again.

Finally, the Examiner climaxes the maze of his inaccuracies with respect to these two incidents by declaring that "it is not contended that Dean lost any production time in doing as he did" (J. A. 110-111). It is indeed difficult to understand how the Examiner comes forward with this pronouncement, since the Petitioner's witness definitely were contending that, on both of the occasions in question, Dean had left his work approximately an hour before quitting time, and approximately an hour before the rest of his crew quit work, and that he "punched out" approximately an hour before he should have—as the time clock cards themselves confirmed.

With respect to the incident which finally precipitated Dean's discharge, the evidence was that this occurred on

July 31 (J. A. 107). J. A. Adams, foreman, testified that, on this occasion, Dean was working in the main Black Hawk Warehouse. Adams stated that he had crews moving cotton bales out of the Warehouse for shipment; that he sent a driver and a helper on an "extractor" machine from Room No. 7 to Room No. 8—the task of the extractor operator and his helper being that of removing certain bales from the stacks and setting them in the aisles (629-632). Adams testified that with these two men, he also sent Dean, as a hand trucker—his task being that of moving the bales from the aisles, after they had been set there by the extractor, out to the shipping platform (629-632). Adams stated that approximately a half hour after he had sent these three men into Room No. 8, he went into that room and found approximately thirty bales of cotton sitting in the aisles—they having been pulled from the stacks and set into the aisles by the extractor operator (629, 631). Yet Dean, as Griffin the Superintendent specifically testified, had not moved "any" bales at all out from the aisles or to the shipping platform (573).

Both Adams and Griffin testified that at about this time Griffin came up; that Adams explained the situation to him; and that as he was doing so, Dean came walking "up the platform" (632). Griffin then had Dean to go down to "the office," and Dean was there discharged by Griffin (447-448).

As bearing on the veracity of Dean, it is to be noted that Dean insisted that it was Hinton who, on the day of his discharge, told him "to go" to "the office," where

Mr. Griffin shortly thereafter discharged him (492, 493). It was again established, however, by time clock cards, which the Petitioner introduced into evidence, that Hinton—as he himself also testified—was not even at the Warehouse during that week, but was away on vacation (533, 536, 596).

The Examiner cavils that Adams could not have known exactly when the three man crew went into Room No. 8 (J. A. 108). On the other hand, Adams certainly was in a position to know, as he testified, that it was approximately a half hour from the time he told the three men to go into Room No. 8 until the time when he, Adams, went himself into Room No. 8. Furthermore, Adams and Griffin could certainly know, as they testified, that when they respectively came into Room No. 8, they found, as pointed out above, that the extractor operator had pulled out approximately thirty bales of cotton from the stacks and set them in the aisles, whereas Dean had not trucked a single bale out to the shipping platform.

James Rosemond

James Rosemond was the operator of a "Perry hook" machine in the Black Hawk Warehouse. The only claim in his behalf is that after testifying in a previous hearing, he was wrongfully denied overtime work (J. A. 114).

At the hearing, it first appeared that counsel for the Board was contending that after Rosemond testified, he did not get as much overtime work in relation to others, on the same kind of job, as he had received, in relationship to such other employees, prior to his testifying. As

to this, however, witnesses for the Board were alternately certain and uncertain. For example, Harold Robinson, a witness placed on the stand by counsel for the Board testified, with respect to Rosemond and the other employees doing the same sort of work as Rosemond, that he didn't "know which one of them actually got the most overtime work," either during the period before or after Rosemond's testifying (516).

In any event, the Petitioner introduced into evidence a tabulation, of time clock cards, showing that during the year immediately following Rosemond's testifying, he received as much overtime as did the other employees who were engaged in the same sort of work as he (616).

Thereupon, counsel for the Board insisted that the only thing pertinent was whether, after testifying, Rosemond continued to get substantially as much overtime work as he had prior to his testifying (620-627). The Petitioner then introducd into evidence a tabulation, of time clock cards, showing that, during the year prior to his testifying, Rosemond received an average of 45.29 hours of work per week, and that during the year immediately following his testifying, he received an average of 44.53 hours of work per week (677-678, 681-682).

It thus became obvious that the case in behalf of Rosemond was, at the most, not a mountain, but a molehill.

Frank Wojeck

Frank Wojeck was an air conditioning mechanic at the Company's Slater plant, in Slater, South Carolina (2607).

His supervisor was Andrew Dempsey, the Plant Engineer (2607).

Dempsey testified that "about six weeks" prior to Wojeck's discharge, as he was going "through the Finishing Department" he came upon a "number of people congregated" behind the "No. 9 and No. 10 range"; that they were "talking and jabbering"; that three of them, including Wojeck, were employees under his supervision; that he had "told them at a previous Monday morning meeting" that "he did not want any more" of this congregating "in this area"; and that on this occasion he told them "somebody's going to lose their job" if this did not stop (2608). Dempsey stated that two of the three men who were under his supervision explained to him why, they had occasion, because of their work, to be in this area, but that Wojeck did not "ever explain what he was doing there," and that Wojeck's work was such that he did not have "any business" in "that area" (2609).

Dempsey's testimony was that on the day that he discharged Wojeck, he received a deluge of complaints "from every direction" with respect to Wojeck's traveling around over the Plant, under such circumstances that he was not discharging his own duties, but was accosting and "bothering" other employees at their work (2609).

Dempsey stated that as he started the "day off that morning," William Lybrand, the Superintendent of Finishing, came to him "in the main office" and told him that the congregating "was starting up again" around the "No. 9 range," and that Wojeck "was bothering" employees in

this area, which was under Lybrand's supervision, and that he, Lybrand, "wanted" him, Dempsey, "to do something about it" (2619). Dempsey testified that he then started looking "for Frank Wojeck," but didn't find him "at the time" (2610).

Dempsey's testimony was that shortly thereafter he had to go "out of the main building" to "a lower building that was off limits to all personnel in the Plant," other than those who had special business there, and that while he was down there, Wayne Garrett, who was supervisor in that area, insisted on talking to him "for a minute" and complained to him that "Frank Woject was down in his area, and bothering his people, interfering with his people" at work (2610, 2611). Dempsey emphasized that Wojeck had no "work duties in that area," except and unless he had received a special "service" call to go there, and that on this day there definitely was no such service call (2611).

Next, said Dempsey, he was informed by his Assistant, Paul Sheriff, that King Bramlette, Weave Room supervisor and Charles Finley, Cloth Room Overseer, were "trying to get in touch" with him (2611). He stated that after he "got back from lunch," he talked with Finley, and that Finley complained to him that Wojeck "was interfering with his people's work," and that very shortly thereafter Bramlette came to his office and outlined a further complaint about his, Dempsey's, employee Woject "bothering his people" and interfering with them at "their work" (2611-2612).

Thereupon, said Dempsey, he instructed his Assistant, Sheriff, to go through the Plant "and look for Frank Wojeck" until he found him and "bring him to the Personnel Department" (2612). Dempsey testified that Sheriff did locate Wojeck "somewhere in the neighborhood of three to three-thirty" and "brought him into the Personnel Department," where Dempsey informed him, Woject, that he was being terminated (2613).

William Lybrand, Superintendent of Finishing, testified that a non-supervisory employee of his, Carlos Poole, had complained to him, Lybrand, about Wojeck's bothering him, Poole, "about the Union" while he, Poole, was in the smoking area—it being the understanding of all the employees that only one employee is supposed to be in the smoking area, in any given department, at any one time (2565). Lybrand stated that Mr. Poole said "he would appreciate it if Mr. Wojeck would leave him alone" (2565).

Further, said Lybrand, the General Overseer of Finishing, Walter Bridgeman, had made a report to him about Wojeck's coming into an area where he had no business being and engaging two of his employees, Woodrow Farr and Larry Masters, in conversation while they were supposed to be at their work (2565). These matters, said Lybrand, he brought to the attention of Dempsey, Wojeck's supervisor, "early on the morning" of the day that Woject "was terminated" (2566-2567).

King Bramlette, Weave Room supervisor, testified that Jesse Stroud, a loom fixer, complained to him that Woject

had "been worrying" him "for about a week and a half on the job" and had asked him if he, Bramlette, could not "do anything about it" (2558). This complaint, said Stroud, he brought to the attention of Dempsey on the same day, as he "learned later," that Wojeck was discharged (2558-2559).

Charles Finley, General Overseer of the Cloth Room, testified that one of his employees, John Stenhouse, had come to him and complained that Wojeck "had been talking" to him "on the job concerning the Union, asking him about joining the Union, signing a card" and "sending it in" and that Wojeck "had given him" a Union card "that morning" while he, Stenhouse, was working (2547). Finley stated that Stenhouse told him, Finley, that Wojeck had been thus contacting him a number of times "over a period of some several days." Finley stated that he went to Dempsey about this (2547).

Wayne Garrett, Overseer of Roving, testified that on the day Wojeck was terminated, he, Garrett, saw him down in the remote area, which is referred to above and which was under Garrett's supervision, talking with one of his employees while the employee was supposed to be working (2495-2496). Garrett further stated that there was nothing in Wojeck's duties which called for him to be in this area "at this time," and that Wojeck had come a long distance out of his way in order to get into this area where he was talking to Garrett's employee (2497-2498).

All this testimony was fully corroborated by non-supervisory employees, including John Stenhouse, Jesse Stroud, Woodrow Farr, Carlos Poole, John Boles and Dwight Mc-

Kinney (2454-2463, 2465-2476, 2479, 2494, 2526, 2530). Jesse Stroud testified, for example, that Wojeck would come to him and expound the virtues of the Union and seek to persuade him to join the Union "once or twice a day" for about a week or "ten days before his discharge" (2469). Stroud stated that he finally "signed a blue card to get" Wojeck "off [his] back" and that he told Wojeck that this was the reason he had done so (2476).

The Examiner's summary observation and "finding" on all of this is that Wojeck was "discharged on reports vague and undefined" (J. A. 120). And to this the Examiner adds the startling imagery that after Dempsey had discharged Wojeck, "he and another supervisor ejected" Wojeck "physically from the Plant" (J. A. 151). This is a pure fantasy on the part of the Examiner, supported by nothing whatever in the record.

The situation, as described by Wojeck himself, was so completely different from what the Examiner "found," that it should put any reviewer on constant guard as to whether the Examiner's "findings" are the product of evidence or imagination. Wojeck testified:—"so I got my money and went on back downstairs to the shop area to pick up my tool box. I asked Mr. Dempsey if it would be all right to drive my car into the gate, inside the lot, so I could load my tool box in the car; and so he said 'yes, come on in the gate and get your tool box'; and he helped me load it up in my car, and before I left, I thanked him for it, and I told him I enjoyed working with him, and shook his hand—and Paul Sheriff, Andy Dempsey and Steve Wilson—I shook hands with all of them" (2150).

From this the Examiner derives a "finding" that Dempsey "and another supervisor ejected" Wojeck "physically from the Plant" (J. A. 151).

James Hill

James Hill worked as a helper on the No. 4 dye range.

Ed Brinkley, Finishing Overseer, testified that, approximately a week before Hill was discharged, it was brought to his, Brinkley's, attention by Edward Elrod, immediate supervisor over Hill, that another employee; Bill Cook, had complained to him, Elrod, that Hill had been "coming up" and "worrying" him, Cook, "every time" that he, Cook, went "in the smoking area," and that Cook had said that if Hill "didn't leave him alone," he, Cook, "was going to drive [Hill] under the range" (2635-2636). Brinkley stated that upon this complaint of Cook being reported to him by Elrod, he, Brinkley, went to Cook and that Cook repeated this same account of the matter (2747). Brinkley stated that Cook further told him that "it had gotten to where practically every time he went to the smoking area," Hill would "come up there and squat down beside of him, and start talking to him there," and that furthermore "every time he would go to the range to pick up his piece tickets," Hill would come up to him and ask him when he, Cook, was "going to change [his] mind and make that right decision" (2636-2637).

Brinkley testified that Cook told him that Hill was also "now bothering Hadyn Parris" (2199). Brinkley stated that he asked Parris about this and that Parris informed him that Hill was bothering him and that often when he

was in "the middle" of his "job," Hill came up and talked to him "about joining the Union" and asked him when he was "going to change" his "mind" (2637).

Likewise, said Brinkley, another employee, Joe Edwards "came to" him and complained to the same effect about Hill, telling him, Edwards, that he had "better change [his] mind and sign that Union card" and that if he didn't, he, Hill, would "sign [him] up any way" (2638-2639).

Brinkley testified that upon these complaints being made to him, he reprimanded Hill about the matter (2640). Then, said Brinkley, Hill began to complain about other employees "bothering" him, and that he thereupon went to each of the individuals whom Hill named and made inquiry of them and warned them not to "bother" or "aggravate" Hill in "any way" (2640).

The Examiner emphasizes an incident, which occurred at about this time, relating to a paper cup that had been tied onto Hill's machine, with an inscription on it to the effect that money was being taken up in Hill's behalf (J. A. 124). As to this, however, the testimony was that Brinkley "saw this" before Hill did, and that Brinkley asked Hill if he knew "who put it up," and that Hill replied that he did not, and that Brinkley "went around and asked" various employees if they had "put that cup up" or if they knew who had done it, but that he "never did find out anything about the cup," and that Brinkley then "destroyed the cup and the note and threw it in the trash can" (2641-2642). Upon this evidence, however, the Examiner finds fault with the Petitioner and declares that it "obtained the benefit of the intimidation" (J. A. 124).

Next, said Brinkley, Hill began to come to him on numerous occasions, stating that he wanted to let Brinkley know that he, Hill, was not talking to other employees whenever he could avoid it. For example, said Brinkley, Hill came to him and told him that he wanted Brinkley to know that "a boy just asked" him, Hill, "for change for fifty cents" and that he "had to tell" the boy that he, Hill, "couldn't talk to him" (2645). Brinkley stated that this sort of "aggravation" from Hill continued, until one afternoon, when Hill came to him and stated that a "new boy had just come" to work on the "No. 5 range" and that he wanted Brinkley to know that he, Hill, "had gone to that boy to tell him that he wasnt going to be able to talk to him" (2646-2647). At this point, said Brinkley, he told Hill that he "was tired" of Hill's coming to him with such matters, apparently for the sole purpose of "aggravating" him, Brinkley, and that he was going to "terminate" him, Hill, "at that time" (2649).

Edward Elrod, Hill's immediate supervisor, and William Lybrand, the Superintendent of Finishing, corroborated these circumstances as narrated by Brinkley (2712-2713, 2715, 2719). And Hill admitted that prior to his discharge, he had been going to Elrod, Brinkley and Lybrand, for approximately a week, and as many as "half a dozen times," telling them that he was explaining to other employees that he could not talk to them (2242).

Leroy Reeves

Leroy Reeves worked as a "smash hand" in the Weave Room, His immediate supervisor was Harold Smith.

Smith testified that on the day of Reeves' discharge, his department was "running," but that, as was not infrequently the case, there was no "smash hand work" needing attention (2441). However, said Smith, in the next department, No. 2, the "smashing" situation was "in very bad shape," and extra smash hands were needed in there (2441). Therefore, said Smith, he told Reeves and two others, of the regular No. 1 smash hands, to go over and work in department No. 2 (2442).

Smith stated that "sometime later" Reeves "came up to" him with "a cup of coffee" in "his hands" and said that if there "was no smashing" to be done in department No. 1, he wanted to get off from work (2443). Smith testified that he told Reeves that there "was too much smashing" to be done in department No. 2 and that he, Smith, could not let him off from work (2443). Thereupon, said Smith, "Reeves turned and went down the alley" toward "his tool box," and that it looked as if Reeves was not going to go and work in department No. 2, as Smith had directed him to do (2443). At this point, said Smith, he went to Walter Looper, the General Overseer of Weaving, and informed him of the situation with respect to Reeves; that he and Looper then went "down to the tool box where Leroy was"; that Looper "talked with Leroy" and asked him was he "going over there" and do the work in department No. 2; and that Reeves answered "no" (2444). Smith said that Looper then turned to him and told him "to write [Reeves'] time out" (2444).

Looper likewise testified that Reeves did not "say anything" as to "why he wanted off," but simply refused to go over and work in department No. 2 (2452).

In his testimony, Reeves admitted that on the day he was discharged, the Plant was running "a regular eight hour work day," and that when he went in to work, "he did not mention" anything to anybody "about getting off that day" (2181). He agreed that it was when Smith told him to go and work in department No. 2, that he "for the first time said that [he] would like to be off" (2182).

Reeves claimed, however, that he told Smith that he would "like" to get off, because he was to be "a pallbearer" at his "Uncle's funeral" and "needed a haircut and a new shirt" (2176). He stated that he did not tell Smith when the funeral was to take place, but that in fact it was not to be held until the next day (2180, 2188). Likewise, said Reeevs, he did not mention anything about a funeral to Looper, but simply told him that he "had taken the circumstances up with Smith" (2182). As has already been pointed out, Smith and Looper testified Reeves never mentioned anything about a funeral, and indeed gave no reason at all for wanting to get off from work, other than the fact that the "smash hand" work was "caught up" in department No. 1.

Reeves further testified that when Looper asked him definitely whether he was or was not "going" to do the work to which he had been assigned in department No. 2, he, Reeves, "didn't tell him" that he "was or wasn't," but that when he told Looper that he "had asked Smith to be off," Looper simply ordered Smith to write out his, Reeves', termination and that "nothing else passed between" him and them (2182, 2183).

Even crediting Reeves' testimony that he told Smith he wanted to get off from work on account of a funeral and rejecting Smith's and Looper's testimony that Reeves never mentioned anything about a funeral, the situation comes to this—that the Examiner and the Board "find" the Petitioner to have discharged Reeves simply because he asked to get off from work on account of a funeral.

Accepting Smith's and Looper's version of the matter, Reeves was discharged because he refused to perform work to which he was assigned—which is certainly not unreasonable. Accepting Reeves' version of the matter, he was discharged simply because he asked to get off from work on account of a funeral—which is an absurdity.

Willis Young

Willis Young worked as a laborer in the Warehouse. His supervisor was Richard Payne.

Payne testified that one morning Young was helping the driver of a fork lift truck. The driver of the fork lift would maneuver it into the side aisles in the Warehouse, where Young would pull cases out of stacks and pile them on a pallet, which in turn rested on the forks of the truck (J. A. 128).

Payne stated that, on the occasion in question, he saw the fork lift truck being backed out of a side aisle into the main aisle of the Warehouse; that the driver of the truck was looking to his rear as he thus backed the truck out of the side aisle and into the main aisle; that as he, Payne, walked down the main aisle, it was moving away from him, its front being presented toward him (2314,

2316). On the front of the truck, as Payne saw it backing down the main aisle in front of him, sat Young on top of a stack of cases, which were resting on the pallet—the whole being supported by the forks of the truck (2315-2316).

Payne testified that as the truck thus moved backward down the main aisle in front of him, with Young in a position facing him, he saw that Young was "slumped over, with his head more or less between his legs, between his knees, in a slumped position" (2137, 2324). Payne stated that he "hollered at" Young, but that "he didn't raise up," and that he, Payne, then "hollered to" the driver "to stop the truck," which the driver promptly did (2317). Payne said that he then "walked up" and "spoke to" Young, and that Young "didn't respond, he didn't say a thing" (2317). Whereupon, said Payne, he "shook him" "on the leg" (2317). At that point, said Payne, Young "raised up," and Payne said to him "what's the matter with you, boy, are you asleep," and that Young replied "no, I just kinda dozed off a little bit" (2317-2318).

Payne stated that he then said to Young "you know we can't have you sleeping on that thing, you'll fall off that thing and get hurt; you get off and go on home" (2318). Young said Payne "didn't say a thing, he just got off the truck and left" (2318).

The next morning, Payne had Young brought to the "Personnel Office," and there informed him that he was "going to have to let [him] go," because of his "sleeping out there yesterday" (2318-2319).

James Chastain, another laborer in the Warehouse, testified that on the morning of the last day Young worked, "about nine o'clock," he saw Young in one of the alleys "leaning up against some cases, like he was nodding, taking a nap" (2326). Chastain stated that he "hollered at" Young, and asked him "what he was doing," and that Young "turned around" but "didn't say anything," so he, Chastain, "left him there" and walked on away (2326-2327). "About ten o'clock," said Chastain, he "went down the return alley" and saw Young "leaning up against some cases" and "nodding again" (2327-2328). Chastain stated that he "went and waked him up and asked him what was wrong," but that Young's "expression showed" that "he didn't want to be bothered," so, said Chastain, he "just left him alone," but that before he walked away, he told Young that "he'd better straighten up and start working, before he got caught" (2327-2328).

Jerry Bowers, who operated a fork lift truck in the Warehouse, testified that on the morning of the same day, while Young's truck was standing "at the end of" an alley, he, Bowers, saw Young "sitting sort of slumped over," with "his head way down," on a stack of "cases that were on the pallet on the fork" (2349). Bowers said that during his "trips through the Warehouse" that morning, he saw Young "two or three other times," and that on these occasions Young's "posture or position" was "the same as before" (2350).

Young testified that when Payne accosted him, he was not sleeping. But he admitted that when Payne came up and got him off of the truck and sent him home, he "didn't

ask" Payne anything, but just "got off the fork lift and went home" (2300). Young's testimony was that Payne simply came up, "patted" him "on the shoulder and told [him] to get off" and "go on home," and to come back the next morning and "meet" him in "the office"—that this is all that Payne said and that he, Young, said "nothing" whatever (2287-2300).

With respect to Young's veracity, he was asked repeatedly whether Payne did not ever tell him, either on the day in question or on the following day, why he was being discharged, and repeatedly he stated that Payne never did tell him "at any time," and that he was "positive of that" (2298, 2299). Later, however, the Petitioner confronted Young with a statement, which Young admitted he had signed and sworn to before a representative of the Labor Board, and in which he had declared that Payne had said to him "I'm going to have to let you go, you were asleep yesterday on that fork lift" (2301).

The Examiner, of course, takes no notice of this. Nor does any of the testimony outlined above faze the Examiner. Instead he chooses to "find" that the Petitioner must have discharged Young because he favored the Union (J. A. 129).

The views of the Examiner, as presented in a colloquy in this case, sound not unlike a passage from a comic opera (2331-2336). Indeed, the Examiner states in his Decision that "from the moment Young placed the last case on the truck until the time a few minutes later, when it arrived at the platform, he had nothing whatever to do

except to ride" (J. A. 129). The Examiner seems to consider that it would have been quite unreasonable for the Petitioner to have any objection to Young's sleeping on the cases atop the fork lift truck, since Young had, at the moment, finished his task of stacking the cases on the truck and was merely riding down the aisle to the platform, where he could awake and unload the cases. The Trial Examiner's view, in other words, is that the Petitioner had no reason to object to Young's sleeping "in transit," up and down the Warehouse aisles, and that therefore he "finds" that Young must have been discharged for Union activity.

Rufus Finley and Donald Jones

Rufus Finley and Donald Jones were "slubber tenders" in the Card Room at the Company's White Horse plant, in Greenville, South Carolina. Jones, like Ben Surratt at the Republic Plant No. 3, did not appear at the hearing before the Trial Examiner at all.

Benjamin Waldrop, Assistant Overseer of Carding, testified that for some time prior to their discharge, Finley and Jones stayed away from their machines entirely "too much," and that whenever they saw other employees "in the vending machine area," they would "go over and talk to them," and that on many such occasions Finley and Jones would not be there "drinking coffee or eating crackers," or for any other purpose except to talk to employees who had gone to the vending machine area (2006, 2007).

Waldrop stated that on the last night that Finley and Jones worked, Coleman Strange, "section man" on the

"cards and pickers," came to his office "between nine-thirty and ten" and told him that one of the employees, Reese Banks, was "all shook up out there," and that "some of the boys" had "got him tore up" (2007). Thereupon, said Waldrop, he went to Banks on his job, and that Banks had "tears" in "his eyes" and "was shaking" (2009). Waldrop stated that he "asked Reese what was wrong," and that Banks told him that Finley and Jones were "pestering" him and wanted him "to join the organizational committee," and that Banks said that he didn't "want to have a damned thing to do with it" and that he had "told them that" (2009).

Waldrop further testified that he asked Banks whether anybody had heard Finley and Jones talking to him, and that Banks said that another employee, Roger Morris, "was in the area" and might have heard what Finley and Jones said to him (2010). Waldrop said that he then inquired of Morris and that Morris said he "didn't hear them" but that Finley and Jones had been "bothering [him] over there" about "joining the Union" (2010).

Waldrop testified that he then went to Finley and Jones and told them that they were creating "disturbance" in "the Mill," and that they would have to go home and "come back" the next day and "talk to [his] boss," C. J. Allen, the General Overseer of Carding (2011).

After he had sent Finley and Jones out of the Mill, said Waldrop, another section man, Jack Balchin, came to him and told him that another employee, James Timms, had been "over at the vending machine" that night, and

that Finley and Jones had gone over to him and solicited him "to join the Union" (2011). Waldrop stated that he then went and talked to James Timms, and that Timms confirmed "exactly what" the "section man had told" him, and that Timms further stated that "every time he went over there that night" Finley and Jones had tried to get him "to join the Union, the organizational committee" (2011, 2014).

Still later the same night, two other employees, Merlyn Robinson and Gerald Owens, came to Waldrop in his office and complained that Finley and Jones had been soliciting them to join the Union—Robinson "at the vending machine" and Owens on "the spare floor" (2015).

Coleman Strange, section man, testified that he noticed some of the employees "ganging up down there" and "staying too long" in the vending machine area, and that upon Banks' leaving this group and returning to his machine, he "was shaking and crying" (2034). Strange said that he asked Banks "what was wrong," and that Banks said that Finley and Jones "had been" onto him about joining up with the Union, and that he had told them that he didn't want to have any "part of a Union," and that Jones then told him that if the Union "got in," he would "make" him, Banks, "wish [he] had of joined the Union" (2035).

C. J. Allen, the General Overseer, testified that when he came to the Plant the next morning, Waldrop told him that he, Waldrop, had sent Finley and Jones home during the night and explained why he had done so (2038). He

stated that Waldrop gave him the names of five employees whom he, Allen, should talk with, and that Waldrop told him that he, Waldrop, had already talked with all of them (2038). Allen stated, however, that by the time Finley and Jones came in to see him, he had only had opportunity to talk to one of the five employees whose names Waldrop had given him (2040).

Allen testified that he told Finley and Jones that he understood they had been "creating a disturbance" among some of the other employees (2041). Upon being questioned by the Examiner as to what constituted "a disturbance" Allen replied that if employees were "disturbed enough to complain," then he thought that was "disturbance" (2043).

Allen stated that Finley and Jones said "well, you're going to fire us anyway, why can't we get our money today, and not have to come back," and that he told them that he "had not fired them," and that he "was going to talk to the other four employees involved" (2044). But Finley and Jones, said Allen, "still wanted their money, to save them a trip from having to come back to the Plant," so he let them have the money that was due them (2044). He stated that he then proceeded to "interview the other employees" and learned from them "approximately the same story that Mr. Waldrop had given" him, and that after talking "with the four other boys involved," and their statements having "verified the story that the Assistant had given" him, he then "made out a separation paper and turned it in" to the Personnel Department and that thereupon Finley and Jones became officially terminated (2045).

Finley, in testifying, admitted that upon Waldrop coming to him and asking him if he had been soliciting Banks "to get on the Union organizing committee," he falsely told Waldrop that he had not, "although in fact" he "had," and that upon Waldrop asking him again, he answered "hell, no," and that in such repeated and emphatic statements to Waldrop, he, Finley, was not telling the truth (1976). Waldrop testified that Jones also falsely denied such solicitations of Banks (1943).

Banks testified that what "shook" him up about his conversation with Finley and Jones was the threat made to him that if he "didn't join" the Union and it "got in," he would "wish [he] had" (2054-2055).

Merlyn Robinson testified that Finley and Jones "approached" him "at least two or three times" to get him "to join the Union," and that this occurred "at the canteen" and "at the drink stand" and "in the Mill area" (2072, 2073).

James Timms stated that "more than once" Finley approached him "in the water house" about "getting" him "to join the Union," and Gerald Owens testified that Finley "stopped" him as he was going to his machine and solicited him "about joining the Union" (2085, 2101).

John Little and Leslie Hancock

John Little and Leslie Hancock were "stitchers" in the Cloth Room at the Company's Patterson plant, in Roanoke Rapids, North Carolina. Hancock, like Ben Surratt and Donald Jones, never appeared at the hearing at all.

S. H. Crumpler, Superintendent of the Plant, Benjamin Bobbitt, Assistant Superintendent of the Plant, Clayton Griggs, Assistant Superintendent of the Finishing Plant, and Robert Pulley, General Overseer of the Cloth Department, all testified that during most of the year preceding the discharge of Little and Hancock, in August, the "Finishing" Plant was making severe and repeated complaints about rolls of cloth which had "bad and crooked seams" caused by the stitchers failing to sew the seams straight (3045-3048, 3082-3084, 3140-3142, 3112-3114).

Pulley stated that he first discussed this with his "stitcher operators" in February, and that, in April, Bobbitt also came and talked to the stitchers about the situation (3112-3113). The result was, said Pulley, that the stitching "got better" for "almost two months," and that then it "went right back to the same slump" (3113-3114).

At this point, said Pulley, Bobbitt told him that the matter "would definitely have to be straightened out," and that he, Pulley, went to the stitchers and told them "they would have to do better" and that "if they didn't, somebody might have to be discharged" (3114-3115).

Bobbitt testified that he told Pulley that the bad seams "had to stop," and that it was going to be necessary "to have straight seams" (3085).

Robert Haskins, a witness for the Board's General Counsel, was asked on cross-examination if the "stitcher machine operators" were not "taken into Mr. Pulley's office" and there showed "crooked seams and talked to" by Mr. Bobbitt, some "three or four months before the

discharge of Hancock and Little" (3032). Haskins denied that this was done prior to the time when Little and Hancock "got fired" (3032). But upon being shown a statement, signed by him for a representative of the Labor Board, Haskins admitted that he had told the Labor Board representative that the stitcher machine operators "were called into Pulley's office" and were there "showed" a "pile of crooked seams" and "talked to" by Bobbitt, "back about April, 1964" (3032). Upon being confronted with this statement, Haskins admitted that this did occur "before these boys were discharged" (3033).

Crumpler, the Plant Superintendent, testified that one day in early August, he was in the Cloth Room and stopped to watch the cloth coming off the tables and saw that Little and Hancock were sewing crooked seams in the cloth (3049). He stated that he then "sent for" Bobbitt and Pulley and said to them "there's the bad seams in the box, look at them, and take whatever steps" are "necessary to get it corrected" (3049).

Bobbitt testified that, on this occasion, Crumpler told him that this "was the thing we had been talking about for about three months and we were still doing it," and that he "had seen it, and he had it in a box, and he wanted me and Mr. Pulley to do whatever was necessary to correct it so he wouldn't find it any more," and that he, Crumpler, "didn't want to see any more crooked seams" (3087). Bobbitt stated that he did "look at the seams" and that "they were not" straight (3087).

Bobbitt said that he and Pulley "went back into the office" and "discussed the problem," and that he told

Pulley that Crumpler had said that he "couldn't put up with" these "bad seams any more," and that Crumpler was looking to him "to take care of it" (3088). Bobbitt said that at this time he "recommended discharge" and that Pulley "agreed," because they "thought with as much time as" had been "spent" and "as much cloth" as had been "shown to" the stitchers, such action should now be taken (3089).

The Examiner says that "on August 7," the occasion in question, Crumpler "for the first time" went into the Cloth Room and observed the stitching operation, which at that time and on that shift was then being done by Little and Hancock (J. A. 147). On the contrary, Crumpler testified that "quite a few times" he went out into the Cloth Room and made "observation about the stitching" and he had many times previously looked at the stitchers performing their work and "still" did so (3048-3049, 3054). Robert Pulley stated that Crumpler came down into the Cloth Room and went "over and in and around the jobs in the Cloth Room" very frequently (3134).

Morris Moseley, a witness for the Board's General Counsel, stated that Crumpler "walks through there all during the day" and that this has been true both "before and after" the discharge of Little and Hancock, and that he didn't notice "any difference" in the frequency of Crumpler's visits and inspections in the Cloth Room, as between the time prior to the discharge of Little and Hancock and the time subsequent to their discharge (3017).

The Examiner says that upon Crumpler's calling to the attention of Bobbitt and Pulley the bad seams which he

had observed, they, Bobbitt and Pulley "measured some of the seams with a ruler, found that some were crooked and cut them out and brought them to Crumpler's office," and that "the two stitchers were then called to the office and discharged" (J. A. 145). This is not correct. As pointed out above, when Bobbitt and Pulley first looked at the cloth, they could immediately tell by sight that "they were not" straight—just as Crumpler had been able to see that they were not straight. The measuring was done the next day, August 8, after Little and Hancock had been discharged on August 7 (3102).

In testifying, Little admitted that at the time he was discharged, he did not "ask to see" the cloth, on account of which he was being discharged, and that he "didn't want to see it" (3003).

The Examiner says that "if there was any question" in his mind about the bad seams sewn by Little and Hancock being merely "a pretext for their discharge," any such question is "dispelled" by remarks attributed by Robert Haskins to one Willie Pulley, whom the Examiner declared to be the "immediate supervisor" over Little and Hancock, to the effect that he, Pulley, "did not exactly know" why "Little and Hancock were terminated" but that "he thought it was because of the Union" (J. A. 144, 148). The Examiner and the Board, of course, reject Willie Pulley's denial of this and equally ignore his testimony, and the testimony of Crumpler, Bobbitt and Robert Pulley that Willie Pulley was not a supervisor (3055, 3103, 3124, 3150, 3152).

All of these witnesses emphasized that Willie Pulley was an "hourly" paid "working foreman"; that he had no authority to hire or fire or discipline employees, nor to make any "recommendation" with respect to their promotion or demotion or the determining of their pay; that he never attended meetings of supervisors; that he was present in the department when Little and Hancock were brought in and discharged, but that he was not asked to come into the office when they were discharged; that he had "to get in touch" with Robert Pulley about any request by an employee for "time off" and the like; that his duties consisted of "manual work" and "recording tickets off of the rolls of cloth" and that he received no "benefits or so-called fringe benefits" of any sort beyond those of "the rank and file employees" (3055-3056, 3103, 3124, 3150-3151, 3162-3163).

CONCLUSION

Upon all that is herein set forth, the Petitioner earnestly prays the Court for a Writ of Certiorari, directed to the United States Court of Appeals for the Second Circuit, to the end that this Court may review the Decision which has been rendered by that Court in the present case.

Respectfully submitted,

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